the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iii) Applications in a same-day filing group. If there are two or more mutually exclusive applications in a same-day filing group, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iv) Applications in a window filing group. Applications in a window filing group are processed in accordance with the procedures for a 30-day notice and cut-off filing group in paragraph (c)(4)(ii) of this section.

(d) Terminology. For the purposes of this section, terms have the following meanings:

(1) The “filing date” of an application is the date on which that application was received in a condition acceptable for filing or the date on which the most recently filed major amendment to that application was received, whichever is later, excluding major amendments in the following circumstances:

(i) The major amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(ii) The major amendment as received is defective or otherwise found unacceptable for filing; or

(iii) The application being amended has been designated for hearing and the Commission or the presiding officer accepts the major amendment.

(2) An “application for initial authorization” is:

(i) Any application requesting an authorization for a new system or station;

(ii) Any application requesting authorization for an existing station to operate on an additional channel, unless the additional channel is for paired two-way radiotelephone operation, is in the same frequency range as the existing channel(s), and will be operationally integrated with the existing channel(s) such as by trunking; or

(iii) any application requesting authorization for a new transmitter at a location more than 2 kilometers (1.2 miles) from any existing transmitters of the applicant licensee on the requested channel or channel block.

§ 90.168 Equal employment opportunities.

Commercial Mobile Radio Services licensees shall afford equal opportunity in employment to all qualified persons, and personnel must not be discriminated against in employment because of sex, race, color, religion, or national origin.

(a) Equal employment opportunity program. Each licensee shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of employment policy and practice.

(1) Under the terms of its program, each licensee shall:

(i) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance.

(ii) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation.

(iii) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to sex, race, color, religion or national origin, and solicit their recruitment assistance on a continuing basis.

(iv) Conduct a continuing campaign to exclude every form of prejudice or discrimination based upon sex, race, color, religion or national origin, from the licensee’s personnel policies and practices and working conditions.

(v) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed in order to insure genuine
equality of opportunity to participate
fully in all organizational units, occupa-
tions and levels of responsibility.

(2) The program must reasonably ad-
dress specific concerns through policies
and actions as set forth in this para-
graph, to the extent that they are ap-
propriate in consideration of licensee
size, location and other factors.

(i) To assure nondiscrimination in re-
cruiting.

(A) Posting notices in the licensee’s
offices informing applicants for em-
ployment of their equal employment
rights and their right to notify the
Equal Employment Opportunity Com-
mision (EEOC), the Federal Commu-
nications Commission (Commission),
or other appropriate agency. Where a
substantial number of applicants are
Spanish-surnamed Americans, such no-
tice should be posted in both Spanish
and English.

(B) Placing a notice in bold type on
the employment application informing
prospective employees that discrimina-
tion because of sex, race, color, reli-
gion, or national origin is prohibited,
and that they may notify the EEOC,
the Commission, or other appropriate
agency if they believe they have been
discriminated against.

(C) Placing employment advertise-
ments in media which have significant
circulation among minority groups in
the recruiting area.

(D) Recruiting through schools and
colleges with significant minority
group enrollments.

(E) Maintaining systematic contacts
with minority and human relations or-
ganizations, leaders and spokespeople
to encourage referral of qualified mi-
nority or female applicants.

(F) Encouraging present employees
to refer minority or female applicants.

(G) Making known to the appropriate
recruitment sources in the employer’s
immediate area that qualified minority
members are being sought for consider-
ation whenever the licensee hires.

(ii) To assure nondiscriminatory
placement and promotion.

(A) Instructing employees of the li-
censee who make decisions on place-
ment and promotion that minority em-
ployees and females are to be consid-
ered without discrimination, and that
job areas in which there is little or no
minority or female representation
should be reviewed to determine
whether this results from discrimina-
tion.

(B) Giving minority groups and fe-
male employees equal opportunity for
positions which lead to higher posi-
tions. Inquiring as to the interest and
skills of all lower-paid employees with
respect to any of the higher-paid posi-
tions, followed by assistance, coun-
seling, and effective measures to en-
able employees with interest and po-
tential to qualify themselves for such
positions.

(C) Reviewing seniority practices to
insure that such practices are non-
discriminatory and do not have a dis-
criminatory effect.

(D) Avoiding use of selection tech-
niques or tests that have the effect of
discriminating against minority groups
or females.

(iv) to assure nondiscrimination in
other areas of employment practices.

(A) Examining rates of pay and fringe
benefits for present employees with
 equivalent duties and adjusting any in-
eoities found.

(B) Providing opportunity to perform
overtime work on a basis that does not
discriminate against qualified minor-
ity groups or female employees.

(b) EEO statement. Each licensee hav-
ing sixteen (16) or more full-time em-
ployees shall file with the Commission,
no later than May 31st following the
grant of that licensee’s first Commer-
cial Mobile Radio Services authoriza-
tion, a statement describing fully its
current equal employment opportunity
program, indicating specific practices to be followed in order to assure equal employment opportunity on the basis of sex, race, color, religion, or national origin in such aspects of employment practices as regards recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff, and termination. Any licensee having sixteen (16) or more full-time employees that changes its existing equal employment opportunity program shall file with the Commission, no later than May 31st thereafter, a revised statement reflecting the change(s).

NOTE: Commercial mobile radio service licensees having sixteen (16) or more full-time employees that do not have a current EEO statement on file with the Commission as of January 2, 1995, must file the statement required by this paragraph no later than May 31, 1995.

(c) Report of complaints filed against licensees. Each licensee, regardless of how many employees it has, shall submit an annual report to the Commission no later than May 31st of each year indicating whether any complaints regarding violations by the licensee or equal employment provisions of Federal, State, Territorial, or local law have been filed before anybody having competent jurisdiction.

(1) The report should state the parties involved, the date filing, the courts or agencies before which the matters have been heard, the appropriate file number (if any), and the respective disposition or current status of any such complaints.

(2) Any licensee who has filed such information with the EEOC may file a notification of such filing with the Commission in lieu of a report.

(d) Complaints of violations of Equal Employment Programs. Complaints alleging employment discrimination against a common carrier licensee are considered by the Commission in the following manner:

(1) If a complaint raising an issue of discrimination is received against a licensee who is within the jurisdiction of the EEOC, it is submitted to that agency. The Commission maintains a liaison with that agency that keeps the Commission informed of the disposition of complaints filed against common carrier licensees.

(2) Complaints alleging employment discrimination against a common carrier licensee who does not fall under the jurisdiction of the EEOC but is covered by appropriate enforceable State law, to which penalties apply, may be submitted by the Commission to the respective State agency.

(3) Complaints alleging employment discrimination against a common carrier licensee who does not fall under the jurisdiction of the EEOC or an appropriate State law, are accorded appropriate treatment by the Commission.

(4) The Commission will consult with the EEOC on all matters relating to the evaluation and determination of compliance by the common carrier licensees with the principles of equal employment as set forth herein.

(5) Complaints indicating a general pattern of disregard of equal employment practices which are received against a licensee that is required to file an employment report to the Commission under §1.815(a) of this chapter are investigated by the Commission.

(e) Commission records. A copy of every annual employment report, equal employment opportunity program statement, reports on complaints regarding violation of equal employment provisions of Federal, State, Territorial, or local law, and all amendments thereto, all correspondence between the licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the Commission.

(f) Licensee records. Each licensee required to file annual employment reports (pursuant to §1.815(a) of this chapter), equal employment opportunity program statements, and annual reports on complaints regarding violations of equal employment provisions of Federal, State, Territorial, or local law shall maintain for public inspection a file containing a copy of each such report and copies of all exhibits, letters, and other documents filed as
part thereto, all correspondence between the licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference. The documents must be retained for a period of two (2) years.

§ 90.169 Construction prior to grant of application.

Applicants may construct facilities prior to grant of their applications, subject to the provisions of this section, but must not operate such facilities until the Commission grants an authorization. If the conditions stated in this section are not met, applicants must not begin to construct facilities.

(a) When applicants may begin construction. An applicant may begin construction of a facility thirty-five (35) days after the date of the Public Notice listing the application for that facility as acceptable for filing.

(b) Notification to stop. If the Commission for any reason determines that construction should not be started or should be stopped while an application is pending, and so notifies the applicant, orally (followed by written confirmation) or in writing, the applicant must not begin construction or, if construction has begun, must stop construction immediately.

(c) Assumption of risk. Applicants that begin construction pursuant to this section before receiving an authorization do so at their own risk and have no recourse against the United States for any losses resulting from:

(1) Applications that are not granted;
(2) Errors or delays in issuing Public Notices;
(3) Having to alter, relocate, or dismantle the facility; or
(4) Incurring whatever costs may be necessary to bring the facility into compliance with applicable laws, or Commission rules and orders.

(d) Conditions. Except as indicated, all pre-grant construction is subject to the following conditions:

(1) The application is not mutually exclusive with any other application;
(2) No petitions to deny the application have been filed;
(3) The application does not include a request for a waiver of one or more Commission rules;
(4) For any construction or alteration that would exceed the requirements of §17.7 of this chapter, the licensee has notified the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1), filed a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the Commission;
(5) The applicant has indicated in the application that the proposed facility would not have a significant environmental effect, in accordance with §§1.1301 through 1.1319 of this chapter; and,
(6) Under applicable international agreements and rules in this part, individual coordination of the proposed channel assignment(s) with a foreign administration is not required.

Subpart H—Policies Governing the Assignment of Frequencies

§ 90.171 Scope.

This subpart contains detailed information concerning the policies under which the Commission assigns frequencies for the use of licensees under this part, frequency coordination procedures, and procedures under which licensees may cooperatively share radio facilities.

§ 90.173 Policies governing the assignment of frequencies.

(a) Except as indicated in paragraph (j) of this section, the frequencies which ordinarily may be assigned to stations in the services governed by this part are listed in subparts B, C and F of this part. Except as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

(b) All applicants and licensees shall cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions.