

(e) The ALJ may order witnesses excluded so that they cannot hear the testimony of other witnesses. This provision does not authorize the exclusion of—

(1) A party who is a natural person;

(2) In the case of a party that is an entity, the officer or employee of the party appearing for the party pro se or designated as the party's representative; or

(3) A natural person whose presence is shown by a party to be essential to the presentation of its case, including a person engaged in assisting the attorney for the Secretary.

§ 160.558 Evidence.

(a) The ALJ must determine the admissibility of evidence.

(b) Except as provided in this subpart, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, for example, to exclude unreliable evidence.

(c) The ALJ must exclude irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) Evidence of crimes, wrongs, or acts other than those at issue in the instant case is admissible in order to show motive, opportunity, intent, knowledge, preparation, identity, lack of mistake, or existence of a scheme. This evidence is admissible regardless of whether the crimes, wrongs, or acts occurred during the statute of limitations period applicable to the acts or omissions that constitute the basis for liability in the case and regardless of whether they were referenced in the Secretary's notice of proposed determination sent in accordance with § 160.514.

(h) The ALJ must permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record must be open to examination by both parties, unless otherwise ordered by the ALJ for good cause shown.

§ 160.560 The record.

(a) The hearing must be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ.

(b) The transcript of the testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for decision by the ALJ and the Secretary.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by any person, unless otherwise ordered by the ALJ for good cause shown.

(d) For good cause, the ALJ may order appropriate redactions made to the record.

§ 160.562 Post hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ must fix the time for filing the briefs. The time for filing may not exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. The briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 160.564 ALJ decision.

(a) The ALJ must issue a decision, based only on the record, which must contain findings of fact and conclusions of law.

(b) The ALJ may affirm, increase, or reduce the penalties imposed by the Secretary.

(c) The ALJ must issue the decision to both parties within 60 days after the time for submission of post-hearing briefs and reply briefs, if permitted, has expired. If the ALJ fails to meet the deadline contained in this paragraph, he or she must notify the parties of the reason for the delay and set a new deadline.

(d) The ALJ's decision is the final decision of the Secretary.

§ 160.566 [Reserved]

§ 160.568 Judicial review.

Judicial review of a penalty that has become final is authorized by 42 U.S.C. 1320a-7a(e).

§ 160.570 Stay of ALJ decision.

(a) Pending judicial review, the respondent may file a request for stay of the effective date of any penalty with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of the request automatically stays the effective date of the penalty until

such time as the ALJ rules upon the request.

(b) The ALJ may not grant a respondent's request for stay of any penalty unless the respondent posts a bond or provides other adequate security.

(c) The ALJ must rule upon a respondent's request for stay within 10 days of receipt.

§ 160.572 [Reserved]

Dated: April 11, 2003.

Tommy G. Thompson,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96-45, 97-21; FCC 03-59]

Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to extend the filing deadline by which the independent auditor hired by the Universal Service Administrative Company (USAC) must submit its draft audit report to the Wireline Competition Bureau (formerly known as the Common Carrier Bureau). At USAC's request, we extend the filing deadline from 60 days to 105 days after the end of the audit period.

DATES: Effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney or Sharon Webber, Deputy Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96-45 and 97-21; FCC 03-59, released on March 26, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

1. In this Order, we amend § 54.717(f) of the Commission's rules to extend the filing deadline by which the independent auditor hired by the

Universal Service Administrative Company (USAC) must submit its draft audit report to the Wireline Competition Bureau (formerly known as the Common Carrier Bureau). At USAC's request, we extend the filing deadline from 60 days to 105 days after the end of the audit period.

2. Under § 54.717 of the Commission's rules, USAC is required to designate an independent auditor to examine its operations and books of account to determine, among other things, whether USAC is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse. The independent auditor is required to submit a draft audit report to the Wireline Competition Bureau audit staff within 60 days after the end of the audit period. Because USAC's fiscal year is the calendar year, the draft audit report is due by March 1.

3. USAC seeks a permanent waiver of this requirement or, in the alternative, a rule change that would allow the independent auditor to file the draft audit report on or before April 15 instead of March 1. USAC explains that because it closes its books in early February and its parent, the National Exchange Carrier Association (NECA), does not close its books until mid-February, the 60-day deadline leaves the independent auditor only two weeks to complete its draft audit report. Specifically, USAC asserts that meeting the March 1 deadline is extremely difficult because it provides the independent auditor with just two weeks to complete six financial audits

and five program reviews. As a result of this short timeframe, it has been difficult for the independent auditor to meet the deadline during the last five years.

4. We amend § 54.717(f) of the Commission's rules to require submission of the independent auditor's draft audit report within 105 days after the end of the audit period. We are persuaded that the time frame specified in the existing rule does not provide adequate time for the independent auditor to complete its draft audit report. Since this rule's inception, the independent auditor has had difficulty meeting the deadline every year. In fact, USAC has received extensions on behalf of the independent auditor for the 1998, 2000, 2001, and 2002 annual audits. A permanent change of this deadline therefore is warranted. We are persuaded that no harm will result by providing the independent auditor an additional 45 days to submit the draft audit report. We find that the change in the audit deadline still gives sufficient time for the Wireline Competition Bureau audit staff and the independent auditor to review the draft audit report and comply with the other provisions of § 54.717 of the Commission's rules.

5. It is ordered that, pursuant to sections 1, 4, and 254 of the Communications Act of 1934, as amended, the rule set forth herein is adopted to allow submission of the draft audit report within 105 calendar days after the end of the audit period.

6. It is further ordered that section 54.717(f) of the Commission's rules is

amended as set forth, effective May 19, 2003.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission:
William F. Caton,
Deputy Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart H—Administration

■ 1. The authority citations continue to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.717 by revising paragraph (f) to read as follows:

§ 54.717 Audits of the Administrator.

* * * * *

(f) Within 105 calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed by the Administrator to submit a draft of the audit report to the Wireline Competition Bureau Audit Staff.

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