

POSTAL SERVICE

39 CFR Part 955

Rules of Practice Before the Postal Service Board of Contract Appeals

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is revising portions of the rules of practice before the Postal Service Board of Contract Appeals to clarify existing procedures, and to modify certain citations to reflect a change in statutory codification.

DATES: *Effective date:* July 28, 2011.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Gary E. Shapiro, (703) 812-1910.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

The rules of practice in proceedings before the Postal Service Board of Contract Appeals are contained in 39 CFR part 955, which was substantially revised on May 5, 2009 (74 FR 20592). Subsequently, it became apparent that certain aspects of the rules required further clarification to conform to existing practice. In addition, citations to the Contract Disputes Act required revision to conform to the new codification of title 41, United States Code, under Public Law 111-350, 124 Stat. 3677 (Jan. 4, 2011).

B. Summary of Changes

Changes to § 955.1 conform the rules to the new codification of the Contract Disputes Act.

Formerly, § 955.6 provided that either party may apply for a hearing on a motion addressed to the jurisdiction of the Board. The revised rule clarifies existing practice that the Board determines whether to conduct oral argument related to such a motion and that it may do so on its own initiative. The term “oral argument” is substituted for “hearing” as a more accurate descriptor of current practice.

Section 955.7 is revised to reflect that the Board, on its own initiative and in the absence of a request by the appellant, may designate a document to constitute the appellant’s complaint, and may do so prior to the time required for the appellant to file its complaint. The revised rule is intended to clarify that the complaint designation determination is to be made by the Board although it may be requested by the appellant.

Section 955.9 is revised to reflect that while the parties may request a hearing, the Board determines whether a hearing will be conducted. Accordingly,

references to the “election” of a party or parties are changed to the “request” of a party or parties. Corresponding changes are made to §§ 955.10 and 955.18.

List of Subjects in 39 CFR Part 955

Administrative practice and procedure, Contract Disputes Act of 1978, Postal Service.

For the reasons set forth in the preamble, the Postal Service hereby amends 39 CFR part 955 as set forth below:

PART 955—RULES OF PRACTICE BEFORE THE POSTAL SERVICE BOARD OF CONTRACT APPEALS

■ 1. The authority citation for 39 CFR part 955 is revised to read as follows:

Authority: 39 U.S.C. 204, 401; 41 U.S.C. 7101-7109.

§ 955.1 [Amended]

■ 2. In § 955.1, the first sentence of paragraph (a) and the first sentence of paragraph (b)(2) are amended by removing “41 U.S.C. 601-613”, and adding “41 U.S.C. 7101-7109” in its place.

■ 3. In § 955.6, paragraph (a) is revised to read as follows:

§ 955.6 Motions.

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Oral argument on the motion may be afforded on application of either party, in the Board’s discretion, or on the Board’s initiative. The Board may at any time and on its own initiative raise the issue of its jurisdiction to proceed with a particular case.

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■ 4. In § 955.7, paragraph (a) is revised to read as follows:

§ 955.7 Pleadings.

(a) *Appellant.* Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed, and shall serve the respondent with a copy. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon the appellant’s request or on the Board’s own initiative, the appellant’s claim, notice of appeal or other document may be deemed to constitute the complaint if in the

opinion of the Board the issues before the Board are sufficiently defined.

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■ 5. Section 955.9 is revised to read as follows:

§ 955.9 Hearing request.

As directed by Board order, each party shall inform the Board, in writing, whether it requests a hearing as prescribed in §§ 955.18 through 955.25, or in the alternative submission of its case on the record without a hearing as prescribed in § 955.12. If a hearing is requested, the request should state where and when the requesting party desires the hearing to be conducted and should explain the reasons for its choices. After considering the parties’ requests, the Board will determine whether a hearing will be held.

■ 6. In § 955.10, the first sentence is revised to read as follows:

§ 955.10 Prehearing briefs.

Based on an examination of the documentation described in § 955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been ordered pursuant to § 955.9. * * *

■ 7. In § 955.18, the first sentence is revised to read as follows:

§ 955.18 Hearings—where and when held.

If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the parties. * * *

Stanley F. Mires,
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GEN Docket No. 86-285; FCC 11-98]

Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 Through 1.1109 of the Commission’s Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to clarify that winning bidders in auctions of commercial broadcast spectrum are