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IAC's yearly meetings and may be removed by the Chairman of the IAC for failure to comply with this requirement.

(d) *Participation in IAC meetings.* Participation at IAC meetings will be limited to IAC members or employees designated by IAC members to act on their behalf. Members unable to attend an IAC meeting should notify the IAC Chairman a reasonable time in advance of the meeting and provide the name of the employee designated on their behalf. With the exception of Commission staff and individuals or groups having business before the IAC, no other persons may attend or participate in an IAC meeting.

(e) *Commission support and oversight.* The Chairman of the Commission, or Commissioner designated by the Chairman for such purpose, will serve as a liaison between the IAC and the Commission and provide general oversight for its activities. The IAC will also communicate directly with the Chief, Consumer & Governmental Affairs Bureau, concerning logistical assistance and staff support, and such other matters as are warranted.

[68 FR 52519, Sept. 4, 2003, as amended at 83 FR 733, Jan. 8, 2018]

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AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1 appear at 63 FR 54077, Oct. 8, 1998.

Subpart A—General Rules of Practice and Procedure

SOURCE: 28 FR 12415, Nov. 22, 1963, unless otherwise noted.

GENERAL

§ 1.1 Proceedings before the Commission.

The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations. For such purposes it may subpena witnesses and require the production of evidence. Procedures to be followed by the Commission shall, unless specifically prescribed in this part, be such as in the opinion of the Commission will best serve the purposes of such proceedings.

(Sec. 403, 48 Stat. 1094; 47 U.S.C. 403)

§ 1.2 Declaratory rulings.

(a) The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

(b) The bureau or office to which a petition for declaratory ruling has been submitted or assigned by the Commission should docket such a petition within an existing or current proceeding, depending on whether the issues raised within the petition substantially relate to an existing proceeding. The bureau or office then should seek comment on the petition via public notice. Unless otherwise specified by the bureau or office, the filing deadline for responsive pleadings to a docketed petition for declaratory ruling will be 30 days from the release date of the public notice, and the default filing deadline for any replies will be 15 days thereafter.

[76 FR 24390, May 2, 2011]

§ 1.3 Suspension, amendment, or waiver of rules.

The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

CROSS REFERENCE: See subpart C of this part for practice and procedure involving rulemaking.

§ 1.4 Computation of time.

(a) *Purpose.* The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions. In addition, this rule section prescribes the method for computing the amount of time within which the Commission must act in response to deadlines established by statute, a Commission rule, or Commission order.

(b) *General Rule—Computation of Beginning Date When Action is Initiated by Commission or Staff.* Unless otherwise

provided, the first day to be counted when a period of time begins with an action taken by the Commission, an Administrative Law Judge or by members of the Commission or its staff pursuant to delegated authority is the *day after the day* on which public notice of that action is given. *See* §1.4(b) (1)–(5) of this section. Unless otherwise provided, all Rules measuring time from the date of the issuance of a Commission document entitled ''Public Notice'' shall be calculated in accordance with this section. *See* §1.4(b)(4) of this section for a description of the ''Public Notice'' document. Unless otherwise provided in §1.4 (g) and (h) of this section, it is immaterial whether the first day is a ''holiday.'' For purposes of this section, the term *public notice* means the date of any of the following events: *See* §1.4(e)(1) of this section for definition of ''holiday.''

(1) For all documents in notice and comment and non-notice and comment rulemaking proceedings required by the Administrative Procedure Act, 5 U.S.C. 552, 553, to be published in the FEDERAL REGISTER, including summaries thereof, the date of publication in the FEDERAL REGISTER.

NOTE TO PARAGRAPH (b)(1): Licensing and other adjudicatory decisions with respect to specific parties that may be associated with or contained in rulemaking documents are governed by the provisions of §1.4(b)(2).

Example 1: A document in a Commission rule making proceeding is published in the FEDERAL REGISTER on Wednesday, May 6, 1987. Public notice commences on Wednesday, May 6, 1987. The first day to be counted in computing the beginning date of a period of time for action in response to the document is Thursday, May 7, 1987, the ''day after the day'' of public notice.

Example 2: Section 1.429(e) provides that when a petition for reconsideration is timely filed in proper form, public notice of its filing is published in the FEDERAL REGISTER. Section 1.429(f) provides that oppositions to a petition for reconsideration shall be filed within 15 days after public notice of the petition's filing in the FEDERAL REGISTER. Public notice of the filing of a petition for reconsideration is published in the FEDERAL REGISTER on Wednesday, June 10, 1987. For purposes of computing the filing period for an opposition, the first day to be counted is Thursday, June 11, 1987, which is the day after the date of public notice. Therefore, oppositions to the reconsideration petition must be filed by Thursday, June 25, 1987, 15 days later.

(2) For non-rulemaking documents released by the Commission or staff, including the Commission's section 271 determinations, 47 U.S.C. 271, the release date.

Example 3: The Chief, Mass Media Bureau, adopts an order on Thursday, April 2, 1987. The text of that order is not released to the public until Friday, April 3, 1987. Public notice of this decision is given on Friday, April 3, 1987. Saturday, April 4, 1987, is the first day to be counted in computing filing periods.

(3) For rule makings of particular applicability, if the rule making document is to be published in the FEDERAL REGISTER and the Commission so states in its decision, the date of public notice will commence on the day of the FEDERAL REGISTER publication date. If the decision fails to specify FEDERAL REGISTER publication, the date of public notice will commence on the release date, even if the document is subsequently published in the FEDERAL REGISTER. *See Declaratory Ruling*, 51 FR 23059 (June 25, 1986).

Example 4: An order establishing an investigation of a tariff, and designating issues to be resolved in the investigation, is released on Wednesday, April 1, 1987, and is published in the FEDERAL REGISTER on Friday, April 10, 1987. If the decision itself specifies FEDERAL REGISTER publication, the date of public notice is Friday, April 10, 1987. If this decision does not specify FEDERAL REGISTER publication, public notice occurs on Wednesday, April 1, 1987, and the first day to be counted in computing filing periods is Thursday, April 2, 1987.

(4) If the full text of an action document is not to be released by the Commission, but a descriptive document entitled ''Public Notice'' describing the action is released, the date on which the descriptive ''Public Notice'' is released.

Example 5: At a public meeting the Commission considers an uncontested application to transfer control of a broadcast station. The Commission grants the application and does not plan to issue a full text of its decision on the uncontested matter. Five days after the meeting, a descriptive ''Public Notice'' announcing the action is publicly released. The date of public notice commences on the day of the release date.

Example 6: A Public Notice of petitions for rule making filed with the Commission is released on Wednesday, September 2, 1987; public notice of these petitions is given on September 2, 1987. The first day to be counted in computing filing times is Thursday, September 3, 1987.

(5) If a document is neither published in the FEDERAL REGISTER nor released, and if a descriptive document entitled ''Public Notice'' is not released, the date appearing on the document sent (e.g., mailed, telegraphed, etc.) to persons affected by the action.

Example 7: A Bureau grants a license to an applicant, or issues a waiver for non-conforming operation to an existing licensee, and no ''Public Notice'' announcing the action is released. The date of public notice commences on the day appearing on the license mailed to the applicant or appearing on the face of the letter granting the waiver mailed to the licensee.

(c) *General Rule—Computation of Beginning Date When Action is Initiated by Act, Event or Default.* Commission procedures frequently require the computation of a period of time where the period begins with the occurrence of an act, event or default and terminates a specific number of days thereafter. Unless otherwise provided, the first day to be counted when a period of time begins with the occurrence of an act, event or default is the day after the day on which the act, event or default occurs.

Example 8: Commission Rule §21.39(d) requires the filing of an application requesting consent to involuntary assignment or control of the permit or license within thirty days after the occurrence of the death or legal disability of the licensee or permittee. If a licensee passes away on Sunday, March 1, 1987, the first day to be counted pursuant to §1.4(c) is the day after the act or event. Therefore, Monday, March 2, 1987, is the first day of the thirty day period specified in §21.39(d).

(d) *General Rule—Computation of Terminal Date.* Unless otherwise provided, when computing a period of time the last day of such period of time is included in the computation, and any action required must be taken on or before that day.

Example 9: Paragraph 1.4(b)(1) of this section provides that ''public notice'' in a notice and comment rule making proceeding begins on the day of FEDERAL REGISTER publication. Paragraph 1.4(b) of this section provides that the first day to be counted in computing a terminal date is the ''day after the day'' on which public notice occurs. Therefore, if the commission allows or requires an action to be taken 20 days after public notice in the FEDERAL REGISTER, the first day to be counted is the day after the date of the FEDERAL REGISTER publication. Accordingly, if the FEDERAL REGISTER document is published on Thursday, July 23, 1987, public notice is given on Thursday, July 23, and the first day to be counted in computing a 20 day period is Friday, July 24, 1987. The 20th day or terminal date upon which action must be taken is Wednesday, August 12, 1987.

(e) Definitions for purposes of this section:

(1) The term holiday means Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's Headquarters are closed and not reopened prior to 5:30 p.m., or on which a Commission office aside from Headquarters is closed (but, in that situation, the holiday will apply only to filings with that particular office). For example, a regularly scheduled Commission business day may become a holiday with respect to the entire Commission if Headquarters is closed prior to 5:30 p.m. due to adverse weather, emergency or other closing. Additionally, a regularly scheduled Commission business day may become a holiday with respect to a particular Commission office aside from Headquarters if that office is closed prior to 5:30 p.m. due to similar circumstances.

NOTE TO PARAGRAPH (e)(1): As of August 1987, officially recognized Federal legal holidays are New Year's Day, January 1; Martin Luther King's Birthday, third Monday in January; Washington's Birthday, third Monday in February; Memorial Day, last Monday in May; Independence Day, July 4; Labor Day, first Monday in September; Columbus Day, second Monday in October; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25. If a legal holiday falls on Saturday or Sunday, the holiday is taken, respectively, on the preceding Friday or the following Monday. In addition, January 20, (Inauguration Day) following a Presidential election year is a legal holiday in the metropolitan Washington, DC area. If Inauguration Day falls on Sunday, the next succeeding day is a legal holiday. *See* 5 U.S.C. 6103; Executive Order No. 11582, 36 FR 2957

(Feb. 11, 1971). The determination of a ''holiday'' will apply only to the specific Commission location(s) designated as on ''holiday'' on that particular day.

(2) The term *business day* means all days, including days when the Commission opens later than the time specified in Rule §0.403, which are not ''holidays'' as defined above.

(3) The term *filing period* means the number of days allowed or prescribed by statute, rule, order, notice or other Commission action for filing any document with the Commission. It does not include any additional days allowed for filing any document pursuant to paragraphs (g), (h) and (j) of this section.

(4) The term *filing date* means the date upon which a document must be filed after all computations of time authorized by this section have been made.

(f) Except as provided in §0.401(b) of this chapter, all petitions, pleadings, tariffs or other documents not required to be accompanied by a fee and which are hand-carried must be tendered for filing in complete form, as directed by the Commission's rules, with the Office of the Secretary before 4 p.m., at the address indicated in 47 CFR 0.401(a). The Secretary will determine whether a tendered document meets the pre-7:00 p.m. deadline. Documents filed electronically pursuant to §1.49(f) must be received by the Commission's electronic filing system before midnight. Applications, attachments and pleadings filed electronically in the Universal Licensing System (ULS) pursuant to §1.939(b) must be received before midnight on the filing date. Media Bureau applications and reports filed electronically pursuant to §73.3500 of this chapter must be received by the electronic filing system before midnight on the filing date.

(g) Unless otherwise provided (e.g., §§1.773 and 76.1502(e)(1) of this chapter), if the filing period is less than 7 days, intermediate holidays shall not be counted in determining the filing date.

Example 10: A reply is required to be filed within 5 days after the filing of an opposition in a license application proceeding. The opposition is filed on Wednesday, June 10, 1987. The first day to be counted in computing the 5 day time period is Thursday, June 11, 1987. Saturday and Sunday are not counted because they are *holidays*. The document must be filed with the Commission on or before the following Wednesday, June 17, 1987.

(h) If a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail (see §1.47(f)), and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed to all parties in the proceeding for filing a response. This paragraph (h) shall not apply to documents filed pursuant to §1.89, §1.315(b) or §1.316. For purposes of this paragraph (h) service by facsimile or by electronic means shall be deemed equivalent to hand delivery.

Example 11: A reply to an opposition for a petition for reconsideration must be filed within 7 days after the opposition is filed. 47 CFR 1.106(h). The rules require that the opposition be served on the person seeking reconsideration. 47 CFR 1.106(g). If the opposition is served on the party seeking reconsideration by mail and the opposition is filed with the Commission on Monday, November 9, 1987, the first day to be counted is Tuesday, November 10, 1987 (the day after the day on which the event occurred, §1.4(c)), and the seventh day is Monday, November 16. An additional 3 days (excluding holidays) is then added at the end of the 7 day period, and the reply must be filed no later than Thursday, November 19, 1987.

Example 12: Assume that oppositions to a petition in a particular proceeding are due 10 days after the petition is filed and must be served on the parties to the proceeding. If the petition is filed on October 28, 1993, the last day of the filing period for oppositions is Sunday, November 7. If service is made by mail, the opposition is due three days after November 7, or Wednesday, November 10.

(i) If both paragraphs (g) and (h) of this section are applicable, make the paragraph (g) computation before the paragraph (h) computation.

Example 13: Section 1.45(b) requires the filing of replies to oppositions within five days after the time for filing oppositions has expired. If an opposition has been filed on the last day of the filing period (Friday, July 10, 1987), and was served on the replying party by mail, §1.4(i) of this section specifies that the paragraph (g) computation should be made before the paragraph (h) computation. Therefore, since the specified filing period is less than seven days, paragraph (g) is applied first. The first day of the filing period is Monday, July 13, 1987, and Friday, July 17, 1987 is the fifth day (the intervening weekend

was not counted). Paragraph (h) is then applied to add three days for mailing (excluding holidays). That period begins on Monday, July 20, 1987. Therefore, Wednesday, July 22, 1987, is the date by which replies must be filed, since the intervening weekend is again not counted.

(j) Unless otherwise provided (e.g. § 76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be filed on the next business day. *See* paragraph (e)(1) of this section. If a rule or order of the Commission specifies that the Commission must act by a certain date and that date falls on a holiday, the Commission action must be taken by the next business day.

Example 14: The filing date falls on Friday, December 25, 1987. The document is required to be filed on the next business day, which is Monday, December 28, 1987.

(k) Where specific provisions of part 1 conflict with this section, those specific provisions of part 1 are controlling. *See*, e.g.,§§ 1.45(d), 1.773(a)(3) and 1.773(b)(2). Additionally, where § 76.1502(e) of this chapter conflicts with this section, those specific provisions of § 76.1502 are controlling. *See* e.g. 47 CFR 76.1502(e).

(l) When Commission action is required by statute to be taken by a date that falls on a holiday, such action may be taken by the next business day (unless the statute provides otherwise).

[52 FR 49159, Dec. 30, 1987; 53 FR 44196, Nov. 2, 1988, as amended at 56 FR 40567, 40568, Aug. 15, 1991; 58 FR 17529, Apr. 5, 1993; 61 FR 11749, Mar. 22, 1996; 62 FR 26238, May 13, 1997; 63 FR 24124, May 1, 1998; 64 FR 27201, May 19, 1999; 64 FR 60725, Nov. 8, 1999; 65 FR 46109, July 27, 2000; 67 FR 13223, Mar. 21, 2002; 71 FR 15618, Mar. 29, 2006; 74 FR 68544, Dec. 28, 2009; 76 FR 24390, May 2, 2011; 76 FR 70908, Nov. 16, 2011; 85 FR 39075, June 30, 2020]

§ 1.5 Mailing address furnished by licensee.

(a) Each licensee shall furnish the Commission with an address to be used by the Commission in serving documents or directing correspondence to that licensee. Unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission for purposes of this paragraph (a). For licensees in the Wireless Radio Services, each licensee shall also furnish the Commission with an email address to be used by Commission for serving documents or directing correspondence to that licensee; correspondence sent to such email address is deemed to have been served on the licensee.

(b) The licensee is responsible for making any arrangements which may be necessary in his particular circumstances to assure that Commission documents or correspondence delivered to this address will promptly reach him or some person authorized by him to act in his behalf.

[28 FR 12415, Nov. 22, 1963, as amended at 85 FR 85527, Dec. 29, 2020]

§ 1.6 Availability of station logs and records for Commission inspection.

(a) Station records and logs shall be made available for inspection or duplication at the request of the Commission or its representative. Such logs or records may be removed from the licensee's possession by a Commission representative or, upon request, shall be mailed by the licensee to the Commission by either registered mail, return receipt requested, or certified mail, return receipt requested. The return receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. A receipt shall be furnished when the logs or records are removed from the licensee's possession by a Commission representative and this receipt shall be retained by the licensee as part of the station records until such records or logs are returned to the licensee. When the Commission has no further need for such records or logs, they shall be returned to the licensee. The provisions of this rule shall apply solely to those station logs and records which are required to be maintained by the provisions of this chapter.

(b) Where records or logs are maintained as the official records of a recognized law enforcement agency and the removal of the records from the possession of the law enforcement agency will hinder its law enforcement activities, such records will not be removed pursuant to this section if the chief of the law enforcement agency

promptly certifies in writing to the Federal Communications Commission that removal of the logs or records will hinder law enforcement activities of the agency, stating insofar as feasible the basis for his decision and the date when it can reasonably be expected that such records will be released to the Federal Communications Commission.

§ 1.7 Documents are filed upon receipt.

Unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or of the Commission's staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.

[60 FR 16055, Mar. 29, 1995]

§ 1.8 Withdrawal of papers.

The granting of a request to dismiss or withdraw an application or a pleading does not authorize the removal of such application or pleading from the Commission's records.

§ 1.10 Transcript of testimony; copies of documents submitted.

In any matter pending before the Commission, any person submitting data or evidence, whether acting under compulsion or voluntarily, shall have the right to retain a copy thereof, or to procure a copy of any document submitted by him, or of any transcript made of his testimony, upon payment of the charges therefor to the person furnishing the same, which person may be designated by the Commission. The Commission itself shall not be responsible for furnishing the copies.

[29 FR 14406, Oct. 20, 1964]

§ 1.12 Notice to attorneys of Commission documents.

In any matter pending before the Commission in which an attorney has appeared for, submitted a document on behalf of or been otherwise designated by a person, any notice or other written communication pertaining to that matter issued by the Commission and which is required or permitted to be furnished to the person will be communicated to the attorney, or to one of such attorneys if more than one is designated. If direct communication with the party is appropriate, a copy of such communication will be mailed to the attorney; or for matters involving Wireless Radio Services, emailed to the attorney instead of mailed.

[85 FR 85527, Dec. 29, 2020]

§ 1.13 Filing of petitions for review and notices of appeals of Commission orders.

(a) *Petitions for review involving a judicial lottery pursuant to 28 U.S.C. 2112(a).* (1) This paragraph pertains to each party filing a petition for review in any United States court of appeals of a Commission Order pursuant to 47 U.S.C. 402(a) and 28 U.S.C. 2342(1), that wishes to avail itself of procedures established for selection of a court in the case of multiple petitions for review of the same Commission action, pursuant to 28 U.S.C. 2112(a). Each such party shall, within ten days after the issuance of that order, serve on the Office of General Counsel, by email to the address *LitigationNotice@fcc.gov*, a copy of its petition for review as filed and date-stamped by the court of appeals within which it was filed. Such copies of petitions for review must be received by the Office of General Counsel by 5:30 p.m. Eastern Time on the tenth day of the filing period. A return email from the Office of General Counsel acknowledging receipt of the petition for review will constitute proof of filing. Upon receipt of any copies of petitions for review according to these procedures, the Commission shall follow the procedures established in section 28 U.S.C. 2112(a) to determine the court in which to file the record in that case.

(2) If a party wishes to avail itself of procedures established for selection of a court in the case of multiple petitions for review of the same Commission action, pursuant to 28 U.S.C. 2112(a), but is unable to use email to effect service as described in paragraph (a)(1) of this section, it shall instead, within ten days after the issuance of the order on appeal, serve a copy of its petition for review in person on the General Counsel in the Office of General Counsel, located at the FCC's main office address indicated in 47 CFR 0.401(a). Only parties not represented

by counsel may use this method. Such parties must telephone the Litigation Division of the Office of General Counsel beforehand to make arrangements at 202–418–1740. Parties are advised to call at least one day before service must be effected.

(3) Computation of time of the ten-day period for filing copies of petitions for review of a Commission order shall be governed by Rule 26 of the Federal Rules of Appellate Procedure. The date of issuance of a Commission order for purposes of filing copies of petitions for review shall be the date of public notice as defined in §1.4(b) of the Commission's Rules, 47 CFR 1.4(b).

(b) *Notices of appeal pursuant to 47 U.S.C. 402(b).* Copies of notices of appeals filed pursuant to 47 U.S.C. 402(b) shall be served upon the General Counsel. The FCC consents to—and encourages—service of such notices by email to the address *LitigationNotice@fcc.gov*.

NOTE: For administrative efficiency, the Commission requests that any petitioner seeking judicial review of Commission actions pursuant to 47 U.S.C. 402(a) serve a copy of its petition on the General Counsel regardless of whether it wishes to avail itself of the procedures for multiple appeals set forth in 47 U.S.C. 2112(a). Parties are encouraged to serve such notice by email to the address *LitigationNotice@fcc.gov*.

[81 FR 40821, June 23, 2016, as amended at 85 FR 64405, Oct. 13, 2020]

§1.14 Citation of Commission documents.

The appropriate reference to the FCC Record shall be included as part of the citation to any document that has been printed in the Record. The citation should provide the volume, page number and year, in that order (e.g., 1 FCC Rcd. 1 (1986). Older documents may continue to be cited to the FCC Reports, first or second series, if they were printed in the Reports (e.g., 1 FCC 2d 1 (1965)).

[51 FR 45890, Dec. 23, 1986]

§1.16 Unsworn declarations under penalty of perjury in lieu of affidavits.

Any document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person, except that, such declaration shall not be used in connection with: (a) A deposition, (b) an oath of office, or (c) an oath required to be taken before a specified official other than a notary public. Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States:

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

[48 FR 8074, Feb. 25, 1983]

§1.17 Truthful and accurate statements to the Commission.

(a) In any investigatory or adjudicatory matter within the Commission's jurisdiction (including, but not limited to, any informal adjudication or informal investigation but excluding any declaratory ruling proceeding) and in any proceeding to amend the FM or Television Table of Allotments (with respect to expressions of interest) or any tariff proceeding, no person subject to this rule shall;

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information

that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

(b) For purpose of paragraph (a) of this section, ''persons subject to this rule'' shall mean the following:

(1) Any applicant for any Commission authorization;

(2) Any holder of any Commission authorization, whether by application or by blanket authorization or other rule;

(3) Any person performing without Commission authorization an activity that requires Commission authorization;

(4) Any person that has received a citation or a letter of inquiry from the Commission or its staff, or is otherwise the subject of a Commission or staff investigation, including an informal investigation;

(5) In a proceeding to amend the FM or Television Table of Allotments, any person filing an expression of interest; and

(6) To the extent not already covered in this paragraph (b), any cable operator or common carrier.

[68 FR 15098, Mar. 28, 2003]

§ 1.18 Administrative Dispute Resolution.

(a) The Commission has adopted an initial policy statement that supports and encourages the use of alternative dispute resolution procedures in its administrative proceedings and proceedings in which the Commission is a party, including the use of regulatory negotiation in Commission rulemaking matters, as authorized under the Administrative Dispute Resolution Act and Negotiated Rulemaking Act.

(b) In accordance with the Commission's policy to encourage the fullest possible use of alternative dispute resolution procedures in its administrative proceedings, procedures contained in the Administrative Dispute Resolution Act, including the provisions dealing with confidentiality, shall also be applied in Commission alternative dispute resolution proceedings in which the Commission itself is not a party to the dispute.

[56 FR 51178, Oct. 10, 1991, as amended at 57 FR 32181, July 21, 1992]

§ 1.19 Use of metric units required.

Where parenthesized English units accompany metric units throughout this chapter, and the two figures are not precisely equivalent, the metric unit shall be considered the sole requirement; except, however, that the use of metric paper sizes is not currently required, and compliance with the English unit shall be considered sufficient when the Commission form requests that data showing compliance with that particular standard be submitted in English units.

[58 FR 44893, Aug. 25, 1993]

PARTIES, PRACTITIONERS, AND WITNESSES

§ 1.21 Parties.

(a) Any party may appear before the Commission and be heard in person or by attorney.

(b) The appropriate Bureau Chief(s) of the Commission shall be deemed to be a party to every adjudicatory proceeding (as defined in the Administrative Procedure Act) without the necessity of being so named in the order designating the proceeding for hearing.

(c) When, in any proceeding, a pleading is filed on behalf of either the General Counsel or the Chief Engineer, he shall thereafter be deemed a party to the proceeding.

(d) Except as otherwise expressly provided in this chapter, a duly authorized corporate officer or employee may act for the corporation in any matter which has not been designated for hearing and, in the discretion of the presiding officer, may appear and be heard on behalf of the corporation in a hearing proceeding.

[28 FR 12415, Nov. 22, 1963, as amended at 37 FR 8527, Apr. 28, 1972; 44 FR 39180, July 5, 1979; 51 FR 12616, Apr. 14, 1986; 85 FR 63172, Oct. 6, 2020]

§ 1.22 Authority for representation.

Any person, in a representative capacity, transacting business with the

Commission, may be required to show his authority to act in such capacity.

§ 1.23 Persons who may be admitted to practice.

(a) Any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any state, territory or the District of Columbia, and who is not under any final order of any authority having power to suspend or disbar an attorney in the practice of law within any state, territory or the District of Columbia that suspends, enjoins, restrains, disbars, or otherwise restricts him or her in the practice of law, may represent others before the Commission.

(b) When such member of the bar acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that, under the provisions of this chapter and the law, he is authorized and qualified to represent the particular party in whose behalf he acts. Further proof of authority to act in a representative capacity may be required.

[28 FR 12415, Nov. 22, 1963, as amended at 57 FR 38285, Aug. 24, 1992]

§ 1.24 Censure, suspension, or disbarment of attorneys.

(a) The Commission may censure, suspend, or disbar any person who has practiced, is practicing or holding himself out as entitled to practice before it if it finds that such person:

(1) Does not possess the qualifications required by § 1.23;

(2) Has failed to conform to standards of ethical conduct required of practitioners at the bar of any court of which he is a member;

(3) Is lacking in character or professional integrity; and/or

(4) Displays toward the Commission or any of its hearing officers conduct which, if displayed toward any court of the United States or any of its Territories or the District of Columbia, would be cause for censure, suspension, or disbarment.

(b) Except as provided in paragraph (c) of this section, before any member of the bar of the Commission shall be censured, suspended, or disbarred, charges shall be preferred by the Commission against such practitioner, and he or she shall be afforded an opportunity to be heard thereon.

(c) Upon receipt of official notice from any authority having power to suspend or disbar an attorney in the practice of law within any state, territory, or the District of Columbia which demonstrates that an attorney practicing before the Commission is subject to an order of final suspension (not merely temporary suspension pending further action) or disbarment by such authority, the Commission may, without any preliminary hearing, enter an order temporarily suspending the attorney from practice before it pending final disposition of a disciplinary proceeding brought pursuant to § 1.24(a)(2), which shall afford such attorney an opportunity to be heard and directing the attorney to show cause within thirty days from the date of said order why identical discipline should not be imposed against such attorney by the Commission.

(d) Allegations of attorney misconduct in Commission proceedings shall be referred under seal to the Office of General Counsel. Pending action by the General Counsel, the decision maker may proceed with the merits of the matter but in its decision may make findings concerning the attorney's conduct only if necessary to resolve questions concerning an applicant and may not reach any conclusions regarding the ethical ramifications of the attorney's conduct. The General Counsel will determine if the allegations are substantial, and, if so, shall immediately notify the attorney and direct him or her to respond to the allegations. No notice will be provided to other parties to the proceeding. The General Counsel will then determine what further measures are necessary to protect the integrity of the Commission's administrative process, including but not limited to one or more of the following:

(1) Recommending to the Commission the institution of a proceeding under paragraph (a) of this section;

(2) Referring the matter to the appropriate State, territorial, or District of Columbia bar; or

(3) Consulting with the Department of Justice.

[28 FR 12415, Nov. 22, 1963, as amended at 57 FR 38285, Aug. 24, 1992; 60 FR 53277, Oct. 13, 1995]

§ 1.25 [Reserved]

§ 1.26 Appearances.

Rules relating to appearances are set forth in §§ 1.87, 1.91, 1.221, and 1.703.

§ 1.27 Witnesses; right to counsel.

Any individual compelled to appear in person in any Commission proceeding may be accompanied, represented, and advised by counsel as provided in this section. (Regulations as to persons seeking voluntarily to appear and give evidence are set forth in § 1.225.)

(a) Counsel may advise his client in confidence, either upon his own initiative or that of the witness, before, during, and after the conclusion of the proceeding.

(b) Counsel for the witness will be permitted to make objections on the record, and to state briefly the basis for such objections, in connection with any examination of his client.

(c) At the conclusion of the examination of his client, counsel may ask clarifying questions if in the judgment of the presiding officer such questioning is necessary or desirable in order to avoid ambiguity or incompleteness in the responses previously given.

(d) Except as provided by paragraph (c) of this section, counsel for the witness may not examine or cross-examine any witness, or offer documentary evidence, unless authorized by the Commission to do so.

(5 U.S.C. 555)

[29 FR 12775, Sept. 10, 1964]

§§ 1.28–1.29 [Reserved]

PLEADINGS, BRIEFS, AND OTHER PAPERS

§ 1.41 Informal requests for Commission action.

Except where formal procedures are required under the provisions of this chapter, requests for action may be submitted informally. Requests should set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions (if any) pursuant to which the request is filed and under which relief is sought, and the interest of the person submitting the request. In application and licensing matters pertaining to the Wireless Radio Services, as defined in § 1.904, such requests must be submitted electronically, via the ULS, and the request must include an email address for receiving electronic service. See § 1.47(d).

[85 FR 85528, Dec. 29, 2020]

§ 1.42 Applications, reports, complaints; cross-reference.

(a) Rules governing applications and reports are contained in subparts D, E, and F of this part.

(b) Special rules governing complaints against common carriers arising under the Communications Act are set forth in subpart E of this part.

(c) Rules governing the FCC Registration Number (FRN) are contained in subpart W of this part.

[28 FR 12415, Nov. 22, 1963, as amended at 66 FR 47895, Sept. 14, 2001]

§ 1.43 Requests for stay; cross-reference.

General rules relating to requests for stay of any order or decision are set forth in §§ 1.41, 1.44(e), 1.45 (d) and (e), and 1.298(a). See also §§ 1.102, 1.106(n), and 1.115(h).

§ 1.44 Separate pleadings for different requests.

(a) Requests requiring action by the Commission shall not be combined in a pleading with requests for action by an administrative law judge or by any person or persons acting pursuant to delegated authority.

(b) Requests requiring action by an administrative law judge shall not be combined in a pleading with requests for action by the Commission or by any person or persons acting pursuant to delegated authority.

(c) Requests requiring action by any person or persons pursuant to delegated authority shall not be combined

in a pleading with requests for action by any other person or persons acting pursuant to delegated authority.

(d) Pleadings which combine requests in a manner prohibited by paragraph (a), (b), or (c) of this section may be returned without consideration to the person who filed the pleading.

(e) Any request to stay the effectiveness of any decision or order of the Commission shall be filed as a separate pleading. Any such request which is not filed as a separate pleading will not be considered by the Commission.

NOTE: Matters which are acted on pursuant to delegated authority are set forth in subpart B of part 0 of this chapter. Matters acted on by the hearing examiner are set forth in § 0.341.

§ 1.45 Pleadings; filing periods.

Except as otherwise provided in this chapter, pleadings in Commission proceedings shall be filed in accordance with the provisions of this section. Pleadings associated with licenses, applications, waivers, and other documents in the Wireless Radio Services must be filed via the ULS, and persons other than applicants or licensees filing pleadings in ULS must provide an email address to receive electronic service. *See* § 1.47(d).

(a) *Petitions*. Petitions to deny may be filed pursuant to § 1.939 of this part.

(b) *Oppositions*. Oppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed.

(c) *Replies*. The person who filed the original pleading may reply to oppositions within 5 days after the time for filing oppositions has expired. The reply shall be limited to matters raised in the oppositions, and the response to all such matters shall be set forth in a single pleading; separate replies to individual oppositions shall not be filed.

(d) *Requests for temporary relief; shorter filing periods*. Oppositions to a request for stay of any order or to a request for other temporary relief shall be filed within 7 days after the request is filed. Replies to oppositions should not be filed and will not be considered. The provisions of § 1.4(h) shall not apply in computing the filing date for oppositions to a request for stay or for other temporary relief.

(e) *Ex parte disposition of certain pleadings*. As a matter of discretion, the Commission may rule *ex parte* upon requests for continuances and extensions of time, requests for permission to file pleadings in excess of the length prescribed in this chapter, and requests for temporary relief, without waiting for the filing of oppositions or replies.

NOTE: Where specific provisions contained in part 1 conflict with this section, those specific provisions are controlling. See, in particular, §§ 1.294(c), 1.298(a), and 1.773.

[28 FR 12415, Nov. 22, 1963, as amended at 33 FR 7153, May 15, 1968; 45 FR 64190, Sept. 29, 1980; 54 FR 31032, July 26, 1989; 54 FR 37682, Sept. 12, 1989; 63 FR 68919, Dec. 14, 1998; 85 FR 85528, Dec. 29, 2020]

§ 1.46 Motions for extension of time.

(a) It is the policy of the Commission that extensions of time shall not be routinely granted.

(b) Motions for extension of time in which to file responses to petitions for rulemaking, replies to such responses, comments filed in response to notice of proposed rulemaking, replies to such comments and other filings in rulemaking proceedings conducted under Subpart C of this part shall be filed at least 7 days before the filing date. If a timely motion is denied, the responses and comments, replies thereto, or other filings need not be filed until 2 business days after the Commission acts on the motion. In emergency situations, the Commission will consider a late-filed motion for a brief extension of time related to the duration of the emergency and will consider motions for acceptance of comments, reply comments or other filings made after the filing date.

(c) If a motion for extension of time in which to make filings in proceedings other than notice and comment rule making proceedings is filed less than 7 days prior to the filing day, the party filing the motion shall (in addition to serving the motion on other parties) orally notify other parties and Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed.

[39 FR 43301, Dec. 12, 1974, as amended at 41 FR 9550, Mar. 5, 1976; 41 FR 14871, Apr. 8, 1976; 42 FR 28887, June 6, 1977; 63 FR 24124, May 1, 1998]

§ 1.47 Service of documents and proof of service.

(a) Where the Commission or any person is required by statute or by the provisions of this chapter to serve any document upon any person, service shall (in the absence of specific provisions in this chapter to the contrary) be made in accordance with the provisions of this section. Documents that are required to be served by the Commission in agency proceedings (*i.e.*, not in the context of judicial proceedings, Congressional investigations, or other proceedings outside the Commission) may be served in electronic form. Documents associated with licenses, applications, waivers, and other requests in the Wireless Radio Services that are required to be served by the Commission in agency proceedings must be served in electronic form. In proceedings involving a large number of parties, and unless otherwise provided by statute, the Commission may satisfy its service obligation by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents.

NOTE TO PARAGRAPH (a): Paragraph (a) of this section grants staff the authority to decide upon the appropriate format for electronic notification in a particular proceeding, consistent with any applicable statutory requirements. The Commission expects that service by public notice will be used only in proceedings with 20 or more parties.

(b) Where any person is required to serve any document filed with the Commission, service shall be made by that person or by his representative on or before the day on which the document is filed.

(c) Commission counsel who formally participate in any proceeding shall be served in the same manner as other persons who participate in that proceeding. The filing of a document with the Commission does not constitute service upon Commission counsel.

(d) Except in formal complaint proceedings against common carriers under §§ 1.720 through 1.740 and proceedings related to the Wireless Radio Services under subpart F of this part, documents may be served upon a party, his attorney, or other duly constituted agent by delivering a copy or by mailing a copy to the last known address. Documents that are required to be served must be served in paper form, even if documents are filed in electronic form with the Commission, unless the party to be served agrees to accept service in some other form. Petitions, pleadings, and other documents associated with licensing matters in the Wireless Radio Services must be served electronically upon a party, his attorney, or other duly constituted agent by delivering a copy by email to the email address listed in the Universal Licensing System (ULS). If a filer is not an applicant or licensee, the document must include an email address for receiving electronic service.

(e) Delivery of a copy pursuant to this section means handing it to the party, his attorney, or other duly constituted agent; or leaving it with the clerk or other person in charge of the office of the person being served; or, if there is no one in charge of such office, leaving it in a conspicuous place therein; or, if such office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. For pleadings, petitions, and other documents associated with licensing matters in the Wireless Radio Services, delivery of a copy pursuant to this section is complete by sending it by email to the email addresses listed in the ULS, or to the email address of the applicant's or licensee's attorney provided in a pleading or other document served on the filer.

(f) Service by mail is complete upon mailing. Service by email is complete upon sending to the email address listed in the ULS for a particular license, application, or filing.

(g) Proof of service, as provided in this section, shall be filed before action is taken. The proof of service shall show the time and manner of service, and may be by written acknowledgement of service, by certificate of the person effecting the service, or by other proof satisfactory to the Commission. Failure to make proof of service will not affect the validity of the service. The Commission may allow the proof to be amended or supplied at any time, unless to do so would result

in material prejudice to a party. Proof of electronic service shall show the email address of the person making the service, in addition to that person's residence or business address; the date and time of the electronic service; the name and email address of the person served; and that the document was served electronically.

(h) Every common carrier and interconnected VoIP provider, as defined in § 54.5 of this chapter, and non-interconnected VoIP provider, as defined in § 64.601(a)(15) of this chapter and with interstate end-user revenues that are subject to contribution to the Telecommunications Relay Service Fund, that is subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of such carrier, interconnected VoIP provider, or non-interconnected VoIP provider in any proceeding before the Commission. Every international section 214 authorization holder must also designate an agent in the District of Columbia who is a U.S. citizen or lawful U.S. permanent resident pursuant to § 63.18(q)(1)(iii) of this chapter. Such designation shall include, for the carrier, interconnected VoIP provider, or non-interconnected VoIP provider and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, internet email address. Such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall additionally list any other names by which it is known or under which it does business, and, if the carrier, interconnected VoIP provider, or non-interconnected VoIP provider is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall file such information with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. Such carriers, interconnected VoIP providers, and non-interconnected VoIP providers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the FEDERAL REGISTER, to satisfy the requirement in the preceding sentence. Each Telecommunications Reporting Worksheet filed annually by a common carrier, interconnected VoIP provider, or non-interconnected VoIP provider must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, internet email address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers, interconnected VoIP providers, and non-interconnected VoIP providers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier, interconnected VoIP provider, or non-interconnected VoIP provider by leaving a copy thereof with such designated agent at his office or usual place of residence. If such carrier, interconnected VoIP provider, or non-interconnected VoIP provider fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

[28 FR 12415, Nov. 22, 1963, as amended at 40 FR 55644, Dec. 1, 1975; 53 FR 11852, Apr. 11, 1988; 63 FR 1035, Jan. 7, 1998; 63 FR 24124, May 1, 1998; 64 FR 41330, July 30, 1999; 64 FR 60725, Nov. 8, 1999; 71 FR 38796, July 10, 2006; 76 FR 24390, May 2, 2011; 76 FR 65969, Oct. 25, 2011; 83 FR 44831, Sept. 4, 2018; 85 FR 76381, Nov. 27, 2020; 85 FR 85528, Dec. 29, 2020]

§ 1.48 Length of pleadings.

(a) Affidavits, statements, tables of contents and summaries of filings, and other materials which are submitted

with and factually support a pleading are not counted in determining the length of the pleading. If other materials are submitted with a pleading, they will be counted in determining its length; and if the length of the pleadings, as so computed, is greater than permitted by the provisions of this chapter, the pleading will be returned without consideration.

(b) It is the policy of the Commission that requests for permission to file pleadings in excess of the length prescribed by the provisions of this chapter shall not be routinely granted. Where the filing period is 10 days or less, the request shall be made within 2 business days after the period begins to run. Where the period is more than 10 days, the request shall be filed at least 10 days before the filing date. (See §1.4.) If a timely request is made, the pleading need not be filed earlier than 2 business days after the Commission acts upon the request.

[41 FR 14871, Apr. 8, 1976, and 49 FR 40169, Oct. 15, 1984]

§ 1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in paper form in any Commission proceeding shall be typewritten or prepared by mechanical processing methods, and shall be filed electronically or on paper with dimensions of A4 (21 cm. x 29.7 cm.) or on 8½ x 11 inch (21.6 cm. x 27.9 cm.) with the margins set so that the printed material does not exceed 6½ x 9½ inches (16.5 cm. x 24.1 cm.). The printed material may be in any typeface of at least 12-point (0.42333 cm. or 12/72″) in height. The body of the text must be double spaced with a minimum distance of 7/32 of an inch (0.5556 cm.) between each line of text. Footnotes and long, indented quotations may be single spaced, but must be in type that is 12-point or larger in height, with at least 1/16 of an inch (0.158 cm.) between each line of text. Counsel are cautioned against employing extended single spaced passages or excessive footnotes to evade prescribed pleading lengths. If single-spaced passages or footnotes are used in this manner the pleading will, at the discretion of the Commission, either be rejected as unacceptable for filing or dismissed with leave to be refiled in proper form. Pleadings may be printed on both sides of the paper. Pleadings that use only one side of the paper shall be stapled, or otherwise bound, in the upper left-hand corner; those using both sides of the paper shall be stapled twice, or otherwise bound, along the left-hand margin so that it opens like a book. The foregoing shall not apply to printed briefs specifically requested by the Commission, official publications, charted or maps, original documents (or admissible copies thereof) offered as exhibits, specially prepared exhibits, or if otherwise specifically provided. All copies shall be clearly legible.

(b) Except as provided in paragraph (d) of this section, all pleadings and documents filed with the Commission, the length of which as computed under this chapter exceeds ten pages, shall include, as part of the pleading or document, a table of contents with page references.

(c) Except as provided in paragraph (d) of this section, all pleadings and documents filed with the Commission, the length of which filings as computed under this chapter exceeds ten pages, shall include, as part of the pleading or document, a summary of the filing, suitably paragraphed, which should be a succinct, but accurate and clear condensation of the substance of the filing. It should not be a mere repetition of the headings under which the filing is arranged. For pleadings and documents exceeding ten but not twenty-five pages in length, the summary should seldom exceed one and never two pages; for pleadings and documents exceeding twenty-five pages in length, the summary should seldom exceed two and never five pages.

(d) The requirements of paragraphs (b) and (c) of this section shall not apply to:

(1) Interrogatories or answers to interrogatories, and depositions;

(2) FCC forms or applications;

(3) Transcripts;

(4) Contracts and reports;

(5) Letters; or

(6) Hearing exhibits, and exhibits or appendicies accompanying any document or pleading submitted to the Commission.

(e) Petitions, pleadings, and other documents associated with licensing matters in the Wireless Radio Services must be filed electronically in ULS. *See* § 22.6 of this chapter for specifications.

(f)(1) In the following types of proceedings, all pleadings, including permissible ex parte submissions, notices of ex parte presentations, comments, reply comments, and petitions for reconsideration and replies thereto, must be filed in electronic format:

(i) Formal complaint proceedings under section 208 of the Act and rules in §§ 1.720 through 1.740, and pole attachment complaint proceedings under section 224 of the Act and rules in §§ 1.1401 through 1.1415;

(ii) Proceedings, other than rulemaking proceedings, relating to customer proprietary network information (CPNI);

(iii) Proceedings relating to cable special relief petitions;

(iv) Proceedings involving Over-the-Air Reception Devices;

(v) Common carrier certifications under § 54.314 of this chapter;

(vi) Domestic Section 214 transfer-of-control applications pursuant to §§ 63.52 and 63.53 of this chapter;

(vii) Domestic section 214 discontinuance applications pursuant to § 63.63 and/or § 63.71 of this chapter;

(viii) Notices of network change and associated certifications pursuant to § 51.325 *et seq*. of this chapter; and

(ix) Hearing proceedings under §§ 1.201 through 1.377.

(2) Unless required under paragraph (f)(1) of this section, in the following types of proceedings, all pleadings, including permissible ex parte submissions, notices of ex parte presentations, comments, reply comments, and petitions for reconsideration and replies thereto, may be filed in electronic format:

(i) General rulemaking proceedings other than broadcast allotment proceedings;

(ii) Notice of inquiry proceedings;

(iii) Petition for rulemaking proceedings (except broadcast allotment proceedings);

(iv) Petition for forbearance proceedings; and

(v) Filings responsive to domestic section 214 transfers under § 63.03 of this chapter, section 214 discontinuances under § 63.71 of this chapter, and notices of network change under § 51.325 *et seq*. of this chapter.

(3) To further greater reliance on electronic filing wherever possible, the Bureaus and Offices, in coordination with the Managing Director, may provide to the public capabilities for electronic filing of additional types of pleadings notwithstanding any provisions of this chapter that may otherwise be construed as requiring such filings to be submitted on paper.

(4) For purposes of compliance with any prescribed pleading lengths, the length of any document filed in electronic form shall be equal to the length of the document if printed out and formatted according to the specifications of paragraph (a) of this section, or shall be no more than 250 words per page.

NOTE TO § 1.49: The table of contents and the summary pages shall not be included in complying with any page limitation requirements as set forth by Commission rule.

[40 FR 19198, May 2, 1975, as amended at 47 FR 26393, June 18, 1982; 51 FR 16322, May 2, 1986; 54 FR 31032, July 26, 1989; 58 FR 44893, Aug. 25, 1993; 59 FR 37721, July 25, 1994; 63 FR 24125, May 1, 1998; 63 FR 68920, Dec. 14, 1998; 74 FR 39227, Aug. 6, 2009; 76 FR 24390, May 2, 2011; 80 FR 1587, Jan. 13, 2015; 80 FR 19847, Apr. 13, 2015; 83 FR 2556, Jan. 18, 2018; 83 FR 7922, Feb. 22, 2018; 83 FR 44831, Sept. 4, 2018; 85 FR 63172, Oct. 6, 2020; 85 FR 85528, Dec. 29, 2020]

§ 1.50 Specifications as to briefs.

The Commission's preference is for briefs that are either typewritten, prepared by other mechanical processing methods, or, in the case of matters in the Wireless Radio Services, composed electronically and sent via ULS. Printed briefs will be accepted only if specifically requested by the Commission. Typewritten, mechanically produced, or electronically transmitted briefs must conform to all of the applicable specifications for pleadings and documents set forth in § 1.49.

[63 FR 68920, Dec. 14, 1998]

§ 1.51 Number of copies of pleadings, briefs, and other papers.

(a) In hearing proceedings, all pleadings, letters, documents, or other written submissions, shall be filed using

the Commission's Electronic Comment Filing System, excluding confidential material as set forth in § 1.314 of these rules. Each written submission that includes confidential material shall be filed as directed by the Commission, along with an additional courtesy copy transmitted to the presiding officer.

(b) In rulemaking proceedings which have not been designated for hearing, *see* § 1.419.

(c) In matters other than rulemaking and hearing cases, unless otherwise specified by Commission rules, an original and one copy shall be filed. If the matter relates to part 22 of the rules, *see* § 22.6 of this chapter.

(d) Where statute or regulation provides for service by the Commission of papers filed with the Commission, an additional copy of such papers shall be filed for each person to be served.

(e) The parties to any proceeding may, on notice, be required to file additional copies of any or all filings made in that proceeding.

(f) For application and licensing matters involving the Wireless Radio Services, pleadings, briefs or other documents must be filed electronically in ULS.

(g) Participants that file pleadings, briefs or other documents electronically in ULS need only submit one copy, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments. (*See* § 1.49)

(h) Pleadings, briefs or other documents filed electronically in ULS by a party represented by an attorney shall include the name, street address, email address, and telephone number of at least one attorney of record. Parties not represented by an attorney that files electronically in ULS shall provide their name, street address, email address, and telephone number.

[76 FR 24391, May 2, 2011, as amended at 83 FR 2556, Jan. 18, 2018; 85 FR 63172, Oct. 6, 2020; 85 FR 85528, Dec. 29, 2020]

§ 1.52 Subscription and verification.

The original of all petitions, motions, pleadings, briefs, and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address. Pleadings, petitions, and other documents related to licensing matters in the Wireless Radio Services shall be signed by at least one attorney of record in his individual name or by the party who is not represented by an attorney and shall include his email and physical mailing address. Either the original document, the electronic reproduction of such original document containing the facsimile signature of the attorney or represented party, or, in the case of matters in the Wireless Radio Services, an electronic filing via ULS is acceptable for filing. If a facsimile or electronic reproduction of such original document is filed, the signatory shall retain the original until the Commission's decision is final and no longer subject to judicial review. If filed electronically, a signature will be considered any symbol executed or adopted by the party with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses. Except when otherwise specifically provided by rule or statute, documents signed by the attorney for a party need not be verified or accompanied by affidavit. The signature or electronic reproduction thereof by an attorney constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If the original of a document is not signed or is signed with intent to defeat the purpose of this section, or an electronic reproduction does not contain a facsimile signature, it may be stricken as sham and false, and the matter may proceed as though the document had not been filed. An attorney may be subjected to appropriate disciplinary action, pursuant to § 1.24, for a willful violation of this section or if scandalous or indecent matter is inserted.

[63 FR 24125, May 1, 1998, as amended at 63 FR 68920, Dec. 14, 1998; 83 FR 2556, Jan. 18, 2018; 85 FR 85529, Dec. 29, 2020]

FORBEARANCE PROCEEDINGS

§ 1.53 Separate pleadings for petitions for forbearance.

In order to be considered as a petition for forbearance subject to the one-year deadline set forth in 47 U.S.C. 160(c), any petition requesting that the Commission exercise its forbearance authority under 47 U.S.C. 160 shall be filed as a separate pleading and shall be identified in the caption of such pleading as a petition for forbearance under 47 U.S.C. 160(c). Any request which is not in compliance with this rule is deemed not to constitute a petition pursuant to 47 U.S.C. 160(c), and is not subject to the deadline set forth therein.

[65 FR 7460, Feb. 15, 2000]

§ 1.54 Petitions for forbearance must be complete as filed.

(a) *Description of relief sought.* Petitions for forbearance must identify the requested relief, including:

(1) Each statutory provision, rule, or requirement from which forbearance is sought.

(2) Each carrier, or group of carriers, for which forbearance is sought.

(3) Each service for which forbearance is sought.

(4) Each geographic location, zone, or area for which forbearance is sought.

(5) Any other factor, condition, or limitation relevant to determining the scope of the requested relief.

(b) *Prima facie case.* Petitions for forbearance must contain facts and arguments which, if true and persuasive, are sufficient to meet each of the statutory criteria for forbearance.

(1) A petition for forbearance must specify how each of the statutory criteria is met with regard to each statutory provision or rule, or requirement from which forbearance is sought.

(2) If the petitioner intends to rely on data or information in the possession of third parties, the petition must identify:

(i) The nature of the data or information.

(ii) The parties believed to have or control the data or information.

(iii) The relationship of the data or information to facts and arguments presented in the petition.

(3) The petitioner shall, at the time of filing, provide a copy of the petition to each third party identified as possessing data or information on which the petitioner intends to rely.

(c) *Identification of related matters.* A petition for forbearance must identify any proceeding pending before the Commission in which the petitioner has requested, or otherwise taken a position regarding, relief that is identical to, or comparable to, the relief sought in the forbearance petition. Alternatively, the petition must declare that the petitioner has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.

(d) *Filing requirements.* Petitions for forbearance shall comply with the filing requirements in § 1.49.

(1) Petitions for forbearance shall be e-mailed to *forbearance@fcc.gov* at the time for filing.

(2) All filings related to a forbearance petition, including all data, shall be provided in a searchable format. To be searchable, a spreadsheet containing a significant amount of data must be capable of being manipulated to allow meaningful analysis.

(e) *Contents.* Petitions for forbearance shall include:

(1) A plain, concise, written summary statement of the relief sought.

(2) A full statement of the petitioner's *prima facie* case for relief.

(3) Appendices that list:

(i) The scope of relief sought as required in § 1.54(a);

(ii) All supporting data upon which the petition intends to rely, including a market analysis; and

(iii) Any supporting statements or affidavits.

(f) *Supplemental information.* The Commission will consider further facts and arguments entered into the record by a petitioner only:

(1) In response to facts and arguments introduced by commenters or opponents.

(2) By permission of the Commission.

[74 FR 39227, Aug. 6, 2009]

§ 1.55 Public notice of petitions for forbearance.

(a) Filing a petition for forbearance initiates the statutory time limit for consideration of the petition.

(b) The Commission will issue a public notice when it receives a properly filed petition for forbearance. The notice will include:

(1) A statement of the nature of the petition for forbearance.

(2) The scope of the forbearance sought and a description of the subjects and issues involved.

(3) The docket number assigned to the proceeding.

(4) A statement of the time for filing oppositions or comments and replies thereto.

[74 FR 39227, Aug. 6, 2009]

§ 1.56 Motions for summary denial of petitions for forbearance.

(a) Opponents of a petition for forbearance may submit a motion for summary denial if it can be shown that the petition for forbearance, viewed in the light most favorable to the petitioner, cannot meet the statutory criteria for forbearance.

(b) A motion for summary denial may not be filed later than the due date for comments and oppositions announced in the public notice.

(c) Oppositions to motions for summary denial may not be filed later than the due date for reply comments announced in the public notice.

(d) No reply may be filed to an opposition to a motion for summary denial.

[74 FR 39227, Aug. 6, 2009]

§ 1.57 Circulation and voting of petitions for forbearance.

(a) If a petition for forbearance includes novel questions of fact, law or policy which cannot be resolved under outstanding precedents and decisions, the Chairman will circulate a draft order no later than 28 days prior to the statutory deadline, unless all Commissioners agree to a shorter period.

(b) The Commission will vote on any circulated order resolving a forbearance petition not later than seven days before the last day that action must be taken to prevent the petition from being deemed granted by operation of law.

[74 FR 39227, Aug. 6, 2009]

§ 1.58 Forbearance petition quiet period prohibition.

The prohibition in § 1.1203(a) on contacts with decisionmakers concerning matters listed in the Sunshine Agenda shall also apply to a petition for forbearance for a period of 14 days prior to the statutory deadline under 47 U.S.C. 160(c) or as announced by the Commission.

[74 FR 39227, Aug. 6, 2009]

§ 1.59 Withdrawal or narrowing of petitions for forbearance.

(a) A petitioner may withdraw or narrow a petition for forbearance without approval of the Commission by filing a notice of full or partial withdrawal at any time prior to the end of the tenth business day after the due date for reply comments announced in the public notice.

(b) Except as provided in paragraph (a) of this section, a petition for forbearance may be withdrawn, or narrowed so significantly as to amount to a withdrawal of a large portion of the forbearance relief originally requested by the petitioner, only with approval of the Commission.

[74 FR 39227, Aug. 6, 2009]

General Application Procedures

§ 1.61 Procedures for handling applications requiring special aeronautical study.

(a) Antenna Structure Registration is conducted by the Wireless Telecommunications Bureau as follows:

(1) Each antenna structure owner that must notify the FAA of proposed construction using FAA Form 7460–1 shall, upon proposing new or modified construction, register that antenna structure with the Wireless Telecommunications Bureau using FCC Form 854.

(2) In accordance with § 1.1307 and § 17.4(c) of this chapter, the Bureau will address any environmental concerns prior to processing the registration.

(3) If a final FAA determination of ''no hazard'' is not submitted along with FCC Form 854, processing of the registration may be delayed or disapproved.

(4) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first licensee authorized to locate on the structure must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by §17.4(g) of this chapter.

(5) Upon receipt of FCC Form 854, and attached FAA final determination of ''no hazard,'' the Bureau may prescribe antenna structure painting and/or lighting specifications or other conditions in accordance with the FAA airspace recommendation. Unless otherwise specified by the Bureau, the antenna structure must conform to the FAA's painting and lighting recommendations set forth in the FAA's determination of ''no hazard'' and the associated FAA study number. The Bureau returns a completed Antenna Structure Registration (FCC Form 854R) to the registrant. If the proposed structure is disapproved the registrant is so advised.

(b) Each operating Bureau or Office examines the applications for Commission authorization for which it is responsible to ensure compliance with FAA notification procedures as well as Commission Antenna Structure Registration as follows:

(1) If Antenna Structure Registration is required, the operating Bureau reviews the application for the Antenna Structure Registration Number and proceeds as follows:

(i) If the application contains the Antenna Structure Registration Number or if the applicant seeks a Cellular or PCS system authorization, the operating Bureau processes the application.

(ii) If the application does not contain the Antenna Structure Registration Number, but the structure owner has already filed FCC Form 854, the operating Bureau places the application on hold until Registration can be confirmed, so long as the owner exhibits due diligence in filing.

(iii) If the application does not contain the Antenna Structure Registration Number, and the structure owner has not filed FCC Form 854, the operating Bureau notifies the applicant that FCC Form 854 must be filed and places the application on hold until Registration can be confirmed, so long as the owner exhibits due diligence in filing.

(2) If Antenna Structure Registration is not required, the operating Bureau processes the application.

(c) Where one or more antenna farm areas have been designated for a community or communities (see §17.9 of this chapter), an application proposing the erection of an antenna structure over 1,000 feet in height above ground to serve such community or communities will not be accepted for filing unless:

(1) It is proposed to locate the antenna structure in a designated antenna farm area, or

(2) It is accompanied by a statement from the Federal Aviation Administration that the proposed structure will not constitute a menace to air navigation, or

(3) It is accompanied by a request for waiver setting forth reasons sufficient, if true, to justify such a waiver.

NOTE: By Commission Order (FCC 65–455), 30 FR 7419, June 5, 1965, the Commission issued the following policy statement concerning the height of radio and television antenna towers:

''We have concluded that this objective can best be achieved by adopting the following policy: Applications for antenna towers higher than 2,000 feet above ground will be presumed to be inconsistent with the public interest, and the applicant will have a burden of overcoming that strong presumption. The applicant must accompany its application with a detailed showing directed to meeting this burden. Only in the exceptional case, where the Commission concludes that a clear and compelling showing has been made that there are public interest reasons requiring a tower higher than 2,000 feet above ground, and after the parties have complied with applicable FAA procedures, and full Commission coordination with FAA on the question of menace to air navigation, will a grant be made. Applicants and parties in interest will,

of course, be afforded their statutory hearing rights.''

[28 FR 12415, Nov. 22, 1963, as amended at 32 FR 8813, June 21, 1967; 32 FR 20860, Dec. 28, 1967; 34 FR 6481, Apr. 15, 1969; 45 FR 55201, Aug. 19, 1980; 58 FR 13021, Mar. 9, 1993, 61 FR 4361, Feb. 6, 1996; 77 FR 3952, Jan. 26, 2012; 79 FR 56984, Sept. 24, 2014]

§ 1.62 Operation pending action on renewal application.

(a)(1) Where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal of license with respect to any activity of a continuing nature, in accordance with the provisions of section 9(b) of the Administrative Procedure Act, such license shall continue in effect without further action by the Commission until such time as the Commission shall make a final determination with respect to the renewal application. No operation by any licensee under this section shall be construed as a finding by the Commission that the operation will serve the public interest, convenience, or necessity, nor shall such operation in any way affect or limit the action of the Commission with respect to any pending application or proceeding.

(2) A non-broadcast licensee operating by virtue of this paragraph (a) shall, after the date of expiration specified in the license, post, in addition to the original license, any acknowledgment received from the Commission that the renewal application has been accepted for filing or a signed copy of the application for renewal of license which has been submitted by the licensee, or in services other than common carrier, a statement certifying that the licensee has mailed or filed a renewal application, specifying the date of mailing or filing.

(b) Where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal or extension of the term of a license with respect to any activity not of a continuing nature, the Commission may in its discretion grant a temporary extension of such license pending determination of such application. No such temporary extension shall be construed as a finding by the Commission that the operation of any radio station thereunder will serve the public interest, convenience, or necessity beyond the express terms of such temporary extension of license, nor shall such temporary extension in any way affect or limit the action of the Commission with respect to any pending application or proceeding.

(c) Except where an instrument of authorization clearly states on its face that it relates to an activity not of a continuing nature, or where the noncontinuing nature is otherwise clearly apparent upon the face of the authorization, all licenses issued by the Commission shall be deemed to be related to an activity of a continuing nature.

(5 U.S.C. 558)

[28 FR 12415, Nov. 22, 1963, as amended at 84 FR 2758, Feb. 8, 2019]

§ 1.65 Substantial and significant changes in information furnished by applicants to the Commission.

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Except as otherwise required by rules applicable to particular types of applications, whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate. Except as otherwise required by rules applicable to particular types of applications, whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with § 1.47. Where the matter is before any court for review, statements and requests to amend shall in addition be served upon the Commission's General Counsel. For

the purposes of this section, an application is ''pending'' before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

(b) Applications in broadcast services subject to competitive bidding will be subject to the provisions of §§ 1.2105(b), 73.5002 and 73.3522 of this chapter regarding the modification of their applications.

(c) All broadcast permittees and licensees must report annually to the Commission any adverse finding or adverse final action taken by any court or administrative body that involves conduct bearing on the permittee's or licensee's character qualifications and that would be reportable in connection with an application for renewal as reflected in the renewal form. If a report is required by this paragraph(s), it shall be filed on the anniversary of the date that the licensee's renewal application is required to be filed, except that licensees owning multiple stations with different anniversary dates need file only one report per year on the anniversary of their choice, provided that their reports are not more than one year apart. Permittees and licensees bear the obligation to make diligent, good faith efforts to become knowledgeable of any such reportable adjudicated misconduct.

NOTE: The terms *adverse finding* and *adverse final action* as used in paragraph (c) of this section include adjudications made by an ultimate trier of fact, whether a government agency or court, but do not include factual determinations which are subject to review *de novo* unless the time for taking such review has expired under the relevant procedural rules. The pendency of an appeal of an adverse finding or adverse final action does not relieve a permittee or licensee from its obligation to report the finding or action.

[48 FR 27200, June 13, 1983, as amended at 55 FR 23084, June 6, 1990; 56 FR 25635, June 5, 1991; 56 FR 44009, Sept. 6, 1991; 57 FR 47412, Oct. 16, 1992; 63 FR 48622, Sept. 11, 1998; 69 FR 72026, Dec. 10, 2004; 75 FR 4702, Jan. 29, 2010]

§ 1.68 Action on application for license to cover construction permit.

(a) An application for license by the lawful holder of a construction permit will be granted without hearing where the Commission, upon examination of such application, finds that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest.

(b) In the event the Commission is unable to make the findings in paragraph (a) of this section, the Commission will designate the application for hearing upon specified issues.

(Sec. 319, 48 Stat. 1089, as amended; 47 U.S.C. 319)

§ 1.77 Detailed application procedures; cross references.

The application procedures set forth in §§ 1.61 through 1.68 are general in nature. Applicants should also refer to the Commission rules regarding the payment of statutory charges (subpart G of this part) and the use of the FCC Registration Number (FRN) (see subpart W of this part). More detailed procedures are set forth in this chapter as follows:

(a) Rules governing applications for authorizations in the Broadcast Radio Services are set forth in subpart D of this part.

(b) Rules governing applications for authorizations in the Common Carrier Radio Services are set forth in subpart E of this part.

(c) Rules governing applications for authorizations in the Private Radio Services are set forth in subpart F of this part.

(d) Rules governing applications for authorizations in the Experimental Radio Service are set forth in part 5 of this chapter.

(e) Rules governing applications for authorizations in the Domestic Public Radio Services are set forth in part 21 of this chapter.

(f) Rules governing applications for authorizations in the Industrial, Scientific, and Medical Service are set forth in part 18 of this chapter.

(g) Rules governing applications for certification of equipment are set forth in part 2, subpart J, of this chapter.

(h) Rules governing applications for commercial radio operator licenses are set forth in part 13 of this chapter.

(i) Rules governing applications for authorizations in the Common Carrier and Private Radio terrestrial microwave services and Local Multipoint Distribution Services are set out in part 101 of this chapter.

[28 FR 12415, Nov. 22, 1963, as amended at 44 FR 39180, July 5, 1979; 47 FR 53378, Nov. 26, 1982; 61 FR 26670, May 28, 1996; 62 FR 23162, Apr. 29, 1997; 63 FR 36596, July 7, 1998; 66 FR 47895, Sept. 14, 2001; 78 FR 25160, Apr. 29, 2013]

MISCELLANEOUS PROCEEDINGS

§ 1.80 Forfeiture proceedings.

(a) *Persons against whom and violations for which a forfeiture may be assessed.* A forfeiture penalty may be assessed against any person found to have:

(1) Willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument of authorization issued by the Commission;

(2) Willfully or repeatedly failed to comply with any of the provisions of the Communications Act of 1934, as amended; or of any rule, regulation or order issued by the Commission under that Act or under any treaty, convention, or other agreement to which the United States is a party and which is binding on the United States;

(3) Violated any provision of section 317(c) or 508(a) of the Communications Act;

(4) Violated any provision of sections 227(b) or (e) of the Communications Act or of §§ 64.1200(a)(1) through (5) and 64.1604 of this title;

(5) Violated any provision of section 511(a) or (b) of the Communications Act or of paragraph (b)(6) of this section;

(6) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code; or

(7) Violated any provision of section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012 or any rule, regulation, or order issued by the Commission under that statute.

NOTE 1 TO PARAGRAPH (a): A forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act, except that the penalties provided for in paragraphs (b)(1) through (4) of this section shall not apply to conduct which is subject to a forfeiture penalty or fine under sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 364(a), 364(b), 386(a), 386(b), 506, and 634 of the Communications Act. The remaining provisions of this section are applicable to such conduct.

(b) *Limits on the amount of forfeiture assessed*—(1) *Forfeiture penalty for a broadcast station licensee, permittee, cable television operator, or applicant.* If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph (b)(1), the forfeiture penalty under this section shall not exceed $55,052 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $550,531 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act. Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed $445,445 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $4,111,796 for any single act or failure to act described in paragraph (a) of this section.

(2) *Forfeiture penalty for a common carrier or applicant.* If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under

this section shall not exceed $220,213 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $2,202,123 for any single act or failure to act described in paragraph (a) of this section.

(3) *Forfeiture penalty for a manufacturer or service provider*. If the violator is a manufacturer or service provider subject to the requirements of section 255, 716, or 718 of the Communications Act, and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than $126,463 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,264,622 for any single act or failure to act.

(4) *Forfeiture penalty for a 227(e) violation*. Any person determined to have violated section 227(e) of the Communications Act or the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than $12,646 for each violation or three times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,264,622 for any single act or failure to act. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

(5) *Forfeiture penalty for a 227(b)(4)(B) violation*. Any person determined to have violated section 227(b)(4)(B) of the Communications Act or the rules in 47 CFR part 64 issued by the Commission under section 227(b)(4)(B) of the Communications Act shall be liable to the United States for a forfeiture penalty determined in accordance with paragraphs (A)–(F) of section 503(b)(2) plus an additional penalty not to exceed $10,748.

(6) *Forfeiture penalty for pirate radio broadcasting*. (i) Any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,149,551; and

(ii) Any person who willfully and knowingly violates the Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of the Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is party, relating to pirate radio broadcasting shall, in addition to any other penalties provided by law, be subject to a fine of not more than $107,478 for each day during which such offense occurs, in accordance with the limit described in this section.

(7) *Forfeiture penalty for a section 6507(b)(4) Tax Relief Act violation*. If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than $118,430 per incident nor more than $1,184,300 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(8) *Forfeiture penalty for a section 6507(b)(5) Tax Relief Act violation*. If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for contacting such a telephone number shall be not less than $11,843 per call nor more than $118,430 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(9) *Maximum forfeiture penalty for any case not previously covered*. In any case not covered in paragraphs (b)(1)

through (8) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $22,021 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $165,159 for any single act or failure to act described in paragraph (a) of this section.

(10) *Factors considered in determining the amount of the forfeiture penalty*. In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

TABLE 1 TO PARAGRAPH (b)(10)—BASE AMOUNTS FOR SECTION 503 FORFEITURES

Forfeitures	Violation amount
Misrepresentation/lack of candor	(1)
Failure to file required DODC required forms, and/or filing materially inaccurate or incomplete DODC information	$15,000
Construction and/or operation without an instrument of authorization for the service	10,000
Failure to comply with prescribed lighting and/or marking	10,000
Violation of public file rules	10,000
Violation of political rules: Reasonable access, lowest unit charge, equal opportunity, and discrimination	9,000
Unauthorized substantial transfer of control	8,000
Violation of children's television commercialization or programming requirements	8,000
Violations of rules relating to distress and safety frequencies	8,000
False distress communications	8,000
EAS equipment not installed or operational	8,000
Alien ownership violation	8,000
Failure to permit inspection	7,000
Transmission of indecent/obscene materials	7,000
Interference	7,000
Importation or marketing of unauthorized equipment	7,000
Exceeding of authorized antenna height	5,000
Fraud by wire, radio or television	5,000
Unauthorized discontinuance of service	5,000
Use of unauthorized equipment	5,000
Exceeding power limits	4,000
Failure to respond to Commission communications	4,000
Violation of sponsorship ID requirements	4,000
Unauthorized emissions	4,000
Using unauthorized frequency	4,000
Failure to engage in required frequency coordination	4,000
Construction or operation at unauthorized location	4,000
Violation of requirements pertaining to broadcasting of lotteries or contests	4,000
Violation of transmitter control and metering requirements	3,000
Failure to file required forms or information	3,000
Failure to make required measurements or conduct required monitoring	2,000
Failure to provide station ID	1,000
Unauthorized pro forma transfer of control	1,000
Failure to maintain required records	1,000

TABLE 2 TO PARAGRAPH (b) (10)—VIOLATIONS UNIQUE TO THE SERVICE

Violation	Services affected	Amount
Unauthorized conversion of long distance telephone service	Common Carrier	$40,000
Violation of operator services requirements	Common Carrier	7,000
Violation of pay-per-call requirements	Common Carrier	7,000
Failure to implement rate reduction or refund order	Cable	7,500
Violation of cable program access rules	Cable	7,500
Violation of cable leased access rules	Cable	7,500
Violation of cable cross-ownership rules	Cable	7,500
Violation of cable broadcast carriage rules	Cable	7,500
Violation of pole attachment rules	Cable	7,500
Failure to maintain directional pattern within prescribed parameters	Broadcast	7,000
Violation of broadcast hoax rule	Broadcast	7,000
AM tower fencing	Broadcast	7,000
Broadcasting telephone conversations without authorization	Broadcast	4,000
Violation of enhanced underwriting requirements	Broadcast	2,000

TABLE 3 TO PARAGRAPH (b) (10)—ADJUSTMENT CRITERIA FOR SECTION 503 FORFEITURES

Upward Adjustment Criteria:

(1) Egregious misconduct.
(2) Ability to pay/relative disincentive.
(3) Intentional violation.
(4) Substantial harm.
(5) Prior violations of any FCC requirements.
(6) Substantial economic gain.
(7) Repeated or continuous violation.

Downward Adjustment Criteria:

(1) Minor violation.
(2) Good faith or voluntary disclosure.
(3) History of overall compliance.
(4) Inability to pay.

TABLE 4 TO PARAGRAPH (b)(10)—NON-SECTION 503 FORFEITURES THAT ARE AFFECTED BY THE DOWNWARD ADJUSTMENT FACTORS [1]

Violation	Statutory amount after 2022 annual inflation adjustment
Sec. 202(c) Common Carrier Discrimination.	$13,213, $661/day.
Sec. 203(e) Common Carrier Tariffs.	$13,213, $661/day.
Sec. 205(b) Common Carrier Prescriptions.	$26,425.
Sec. 214(d) Common Carrier Line Extensions.	$2,642/day.
Sec. 219(b) Common Carrier Reports.	$2,642/day.
Sec. 220(d) Common Carrier Records & Accounts.	$13,213/day.
Sec. 223(b) Dial-a-Porn.	$136,924/day.
Sec. 227(e) Caller Identification.	$12,646/violation. $37,937/day for each day of continuing violation, up to $1,264,622 for any single act or failure to act.
Sec. 364(a) Forfeitures (Ships).	$11,011/day (owner).
Sec. 364(b) Forfeitures (Ships).	$2,203 (vessel master).
Sec. 386(a) Forfeitures (Ships).	$11,011/day (owner).
Sec. 386(b) Forfeitures (Ships).	$2,203 (vessel master).
Sec. 511 Pirate Radio Broadcasting.	$2,149,551, $107,478/day.

TABLE 4 TO PARAGRAPH (b)(10)—NON-SECTION 503 FORFEITURES THAT ARE AFFECTED BY THE DOWNWARD ADJUSTMENT FACTORS [1]—Continued

Violation	Statutory amount after 2022 annual inflation adjustment
Sec. 634 Cable EEO.	$976/day.

[1] Unlike section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with two exceptions, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. One exception is section 223 of the Act, which provides a maximum forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The other exception is section 227(e) of the Act, which provides maximum forfeitures per violation, and for continuing violations. The Commission will apply the factors set forth in section 503(b)(2)(E) of the Act and this table 4 to determine the amount of the penalty to assess in any particular situation. The amounts in this table 4 are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461. These non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in table 3 to this paragraph (b)(10).

NOTE 2 TO PARAGRAPH (B)(10): *Guidelines for Assessing Forfeitures*. The Commission and its staff may use the guidelines in tables 1 through 4 of this paragraph (b)(10) in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceilings per violation or per day for a continuing violation stated in section 503 of the Communications Act and the Commission's rules are described in paragraph (b)(11) of this section. These statutory maxima became effective September 13, 2013. Forfeitures issued under other sections of the Act are dealt with separately in table 4 to this paragraph (b)(10).

(11) *Inflation adjustments to the maximum forfeiture amount*. (i) Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 (129 Stat. 599–600), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101–410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted annually for inflation by order published no later than January 15 each year. Annual inflation adjustments will be based on the percentage (if any) by which the Consumer Price Index for all Urban Consumers (CPI–U) for October preceding the date of the adjustment exceeds the prior year's CPI–U for October. The Office of Management and Budget (OMB) will

issue adjustment rate guidance no later than December 15 each year to adjust for inflation in the CPI–U as of the most recent October.

(ii) The application of the annual inflation adjustment required by the foregoing Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

TABLE 5 TO PARAGRAPH (b)(11)(ii)

U.S. Code citation	Maximum penalty after 2022 annual inflation adjustment
47 U.S.C. 202(c)	$13,213
	661
47 U.S.C. 203(e)	13,213
	661
47 U.S.C. 205(b)	26,425
47 U.S.C. 214(d)	2,642
47 U.S.C. 219(b)	2,642
47 U.S.C. 220(d)	13,213
47 U.S.C. 223(b)	136,924
47 U.S.C. 227(e)	12,646
	37,937
	1,264,622
47 U.S.C. 362(a)	11,011
47 U.S.C. 362(b)	2,203
47 U.S.C. 386(a)	11,011
47 U.S.C. 386(b)	2,203
47 U.S.C. 503(b)(2)(A)	55,052
	550,531
47 U.S.C. 503(b)(2)(B)	220,213
	22,202,123
47 U.S.C. 503(b)(2)(C)	445,445
	4,111,796
47 U.S.C. 503(b)(2)(D)	22,021
	165,159
47 U.S.C. 503(b)(2)(F)	126,463
	1,264,622
47 U.S.C. 507(a)	2,181
47 U.S.C. 507(b)	320
47 U.S.C. 511	2,149,551
	107,478
47 U.S.C. 554	976

NOTE 3 TO PARAGRAPH (b) (11): Pursuant to Public Law 104–134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

(c) *Limits on the time when a proceeding may be initiated.* (1) In the case of a broadcast station, no forfeiture penalty shall be imposed if the violation occurred more than 1 year prior to the issuance of the appropriate notice or prior to the date of commencement of the current license term, whichever is earlier. For purposes of this paragraph, ''date of commencement of the current license term'' means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

(2) In the case of a forfeiture imposed against a carrier under sections 202(c), 203(e), and 220(d), no forfeiture will be imposed if the violation occurred more than 5 years prior to the issuance of a notice of apparent liability.

(3) In the case of a forfeiture imposed under section 227(e), no forfeiture will be imposed if the violation occurred more than 4 years prior to the date on which the appropriate notice was issued.

(4) In the case of a forfeiture imposed under section 227(b)(4)(B), no forfeiture will be imposed if the violation occurred more than 4 years prior to the date on which the appropriate notice is issued.

(5) In all other cases, no penalty shall be imposed if the violation occurred more than 1 year prior to the date on which the appropriate notice is issued.

(d) *Preliminary procedure in some cases; citations.* Except for a forfeiture imposed under sections 227(b), 227(e)(5), 511(a), and 511(b) of the Act, no forfeiture penalty shall be imposed upon any person under the preceding sections if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person:

(1) Is sent a citation reciting the violation charged;

(2) Is given a reasonable opportunity (usually 30 days) to request a personal interview with a Commission official, at the field office which is nearest to such person's place of residence; and

(3) Subsequently engages in conduct of the type described in the citation. However, a forfeiture penalty may be imposed, if such person is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required or if

such person is a cable television operator, or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower. Paragraph (c) of this section does not limit the issuance of citations. When the requirements of this paragraph have been satisfied with respect to a particular violation by a particular person, a forfeiture penalty may be imposed upon such person for conduct of the type described in the citation without issuance of an additional citation.

(e) *Preliminary procedure in Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act) cases.* Absent good cause, in any case alleging a violation of subsection (a) or (b) of section 511 of the Act, the Commission shall proceed directly to issue a notice of apparent liability for forfeiture without first issuing a notice of unlicensed operation.

(f) *Alternative procedures.* In the discretion of the Commission, a forfeiture proceeding may be initiated either: (1) By issuing a notice of apparent liability, in accordance with paragraph (f) of this section, or (2) a notice of opportunity for hearing, in accordance with paragraph (g).

(g) *Notice of apparent liability.* Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission or its designee will issue a written notice of apparent liability.

(1) *Content of notice.* The notice of apparent liability will:

(i) Identify each specific provision, term, or condition of any act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, or instrument of authorization which the respondent has apparently violated or with which he has failed to comply,

(ii) Set forth the nature of the act or omission charged against the respondent and the facts upon which such charge is based,

(iii) State the date(s) on which such conduct occurred, and

(iv) Specify the amount of the apparent forfeiture penalty.

(2) *Delivery.* The notice of apparent liability will be sent to the respondent, by certified mail, at his last known address (see §1.5).

(3) *Response.* The respondent will be afforded a reasonable period of time (usually 30 days from the date of the notice) to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent.

(4) *Forfeiture order.* If the proposed forfeiture penalty is not paid in full in response to the notice of apparent liability, the Commission, upon considering all relevant information available to it, will issue an order canceling or reducing the proposed forfeiture or requiring that it be paid in full and stating the date by which the forfeiture must be paid.

(5) *Judicial enforcement of forfeiture order.* If the forfeiture is not paid, the case will be referred to the Department of Justice for collection under section 504(a) of the Communications Act.

(h) *Notice of opportunity for hearing.* The procedures set out in this paragraph apply only when a formal hearing under section 503(b)(3)(A) of the Communications Act is being held to determine whether to assess a forfeiture penalty.

(1) Before imposing a forfeiture penalty, the Commission may, in its discretion, issue a notice of opportunity for hearing. The formal hearing proceeding shall be conducted by an administrative law judge under procedures set out in subpart B of this part, including procedures for appeal and review of initial decisions. A final Commission order assessing a forfeiture under the provisions of this paragraph is subject to judicial review under section 402(a) of the Communications Act.

(2) If, after a forfeiture penalty is imposed and not appealed or after a court enters final judgment in favor of the Commission, the forfeiture is not paid, the Commission will refer the matter

to the Department of Justice for collection. In an action to recover the forfeiture, the validity and appropriateness of the order imposing the forfeiture are not subject to review.

(3) Where the possible assessment of a forfeiture is an issue in a hearing proceeding to determine whether a pending application should be granted, and the application is dismissed pursuant to a settlement agreement or otherwise, and the presiding judge has not made a determination on the forfeiture issue, the presiding judge shall forward the order of dismissal to the attention of the full Commission. Within the time provided by §1.117, the Commission may, on its own motion, proceed with a determination of whether a forfeiture against the applicant is warranted. If the Commission so proceeds, it will provide the applicant with a reasonable opportunity to respond to the forfeiture issue (see paragraph (f)(3) of this section) and make a determination under the procedures outlined in paragraph (f) of this section.

(i) *Payment*. The forfeiture should be paid electronically using the Commission's electronic payment system in accordance with the procedures set forth on the Commission's website, *www.fcc.gov/licensing-databases/fees*.

(j) *Remission and mitigation*. In its discretion, the Commission, or its designee, may remit or reduce any forfeiture imposed under this section. After issuance of a forfeiture order, any request that it do so shall be submitted as a petition for reconsideration pursuant to §1.106.

(k) *Effective date*. Amendments to paragraph (b) of this section implementing Pub. L. No. 101–239 are effective December 19, 1989.

[43 FR 49308, Oct. 23, 1978, as amended at 48 FR 15631, Apr. 12, 1983; 50 FR 40855, Oct. 7, 1985; 55 FR 25605, June 22, 1990; 56 FR 25638, June 5, 1991; 57 FR 23161, June 2, 1992; 57 FR 47006, Oct. 14, 1992; 57 FR 48333, Oct. 23, 1992; 58 FR 6896, Feb. 3, 1993; 58 FR 27473, May 10, 1993; 62 FR 4918, Feb. 3, 1997; 62 FR 43475, Aug. 14, 1997; 63 FR 26992, May 15, 1998; 65 FR 60868, Oct. 13, 2000; 69 FR 47789, Aug. 6, 2004; 72 FR 33914, June 20, 2007; 73 FR 9018, Feb. 19, 2008; 73 FR 44664, July 31, 2008; 76 FR 43203, July 20, 2011; 76 FR 82388, Dec. 30, 2011; 77 FR 71137, Nov. 29, 2012; 78 FR 10100, Feb. 13, 2013; 78 FR 49371, Aug. 14, 2013; 81 FR 42555, June 30, 2016; 82 FR 8171, Jan. 24, 2017; 82 FR 57882, Dec. 8, 2017; 83 FR 4600, Feb. 1. 2018; 84 FR 2462, Feb. 7, 2019; 85 FR 2318, Jan. 15, 2020; 85 FR 22029, Apr. 21, 2020; 85 FR 38333, June 26, 2020; 85 FR 63172, Oct. 6, 2020; 86 FR 3830, Jan. 15, 2021; 86 FR 15797, Mar. 25, 2021; 86 FR 18159, Apr. 7, 2021; 87 FR 397, Jan. 5, 2022]

§ 1.83 Applications for radio operator licenses.

(a) Application filing procedures for amateur radio operator licenses are set forth in part 97 of this chapter.

(b) Application filing procedures for commercial radio operator licenses are set forth in part 13 of this chapter. Detailed information about application forms, filing procedures, and where to file applications for commercial radio operator licenses is contained in the bulletin ''Commercial Radio Operator Licenses and Permits.'' This bulletin is available from the Commission's Forms Distribution Center by calling 1–800–418-FORM (3676).

[47 FR 53378, Nov. 26, 1982, as amended at 58 FR 13021, Mar. 9, 1993; 63 FR 68920, Dec. 14, 1998]

§ 1.85 Suspension of operator licenses.

Whenever grounds exist for suspension of an operator license, as provided in section 303(m) of the Communications Act, the Chief of the Wireless Telecommunications Bureau, with respect to amateur and commercial radio operator licenses, may issue an order suspending the operator license. No order of suspension of any operator's license shall take effect until 15 days' notice in writing of the cause for the proposed suspension has been given to the operator licensee, who may make written application to the Commission at any time within the said 15 days for

a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to email the said application. In the event that conditions prevent emailing of the application before the expiration of the 15-day period, the application shall then be emailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be designated for hearing by the Chief, Wireless Telecommunications Bureau and said suspension shall be held in abeyance until the conclusion of the hearing. Upon the conclusion of said hearing, the Commission may affirm, modify, or revoke said order of suspension. If the license is ordered suspended, the operator shall send his operator license to the Mobility Division, Wireless Telecommunications Bureau, in Washington, DC, on or before the effective date of the order, or, if the effective date has passed at the time notice is received, the license shall be sent to the Commission forthwith.

[85 FR 85529, Dec. 29, 2020]

§ 1.87 Modification of license or construction permit on motion of the Commission.

(a) Whenever it appears that a station license or construction permit should be modified, the Commission shall notify the licensee or permittee in writing of the proposed action and reasons therefor, and afford the licensee or permittee at least thirty days to protest such proposed order of modification, except that, where safety of life or property is involved, the Commission may by order provide a shorter period of time.

(b) The notification required in paragraph (a) of this section may be effectuated by a notice of proposed rulemaking in regard to a modification or addition of an FM or television channel to the Table of Allotments (§§ 73.202 and 73.504 of this chapter) or Table of Assignments (§ 73.606 of this chapter). The Commission shall send a copy of any such notice of proposed rulemaking to the affected licensee or permittee by email. For modifications involving Wireless Radio Services, the Commission shall notify the licensee or permittee by email of the proposed action and reasons therefor, and afford the licensee or permittee at least thirty days to protest such proposed order of modification, except that:

(1) Where safety of life or property is involved, the Commission may by order provide a shorter period of time; and

(2) Where the notification required in paragraph (a) of this section is effectuated by publication in the FEDERAL REGISTER, the Commission shall afford the licensee or permittee at least thirty days after publication in the FEDERAL REGISTER to protest such proposed order of modification.

(c) Any other licensee or permittee who believes that its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.

(d) Any protest filed pursuant to this section shall be subject to the requirements of section 309 of the Communications Act of 1934, as amended, for petitions to deny.

(e) In any case where a hearing proceeding is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission except that, with respect to any issue that pertains to the question of whether the proposed action would modify the license or permit of a person filing a protest pursuant to paragraph (c) of this section, such burdens shall be as described by the Commission.

(f) In order to use the right to a hearing and the opportunity to give evidence upon the issues specified in any order designating a matter for hearing, any licensee, or permittee, itself or by counsel, shall, within the period of time as may be specified in that order, file with the Commission a written appearance stating that it will present evidence on the matters specified in the order and, if required, appear before the presiding officer at a date and time to be determined.

(g) The right to file a protest or the right to a hearing proceeding shall, unless good cause is shown in a petition to be filed not later than 5 days before the lapse of time specified in paragraph

(a) or (f) of this section, be deemed waived:

(1) In case of failure to timely file the protest as required by paragraph (a) of this section or a written statement as required by paragraph (f) of this section.

(2) In case of filing a written statement provided for in paragraph (f) of this section but failing to appear at the hearing, either in person or by counsel.

(h) Where the right to file a protest or have a hearing is waived, the licensee or permittee will be deemed to have consented to the modification as proposed and a final decision may be issued by the Commission accordingly. Irrespective of any waiver as provided for in paragraph (g) of this section or failure by the licensee or permittee to raise a substantial and material question of fact concerning the proposed modification in his protest, the Commission may, on its own motion, designate the proposed modification for hearing in accordance with this section.

(i) Any order of modification issued pursuant to this section shall include a statement of the findings and the grounds and reasons therefor, shall specify the effective date of the modification, and shall be served on the licensee or permittee.

[52 FR 22654, June 15, 1987, as amended at 85 FR 63172, Oct. 6, 2020; 85 FR 85529, Dec. 29, 2020]

§ 1.88 Predesignation pleading procedure.

In cases where an investigation is being conducted by the Commission in connection with the operation of a broadcast station or a pending application for renewal of a broadcast license, the licensee may file a written statement to the Commission setting forth its views regarding the matters under investigation; the staff, in its discretion, may in writing, advise such licensee of the general nature of the investigation, and advise the licensee of its opportunity to submit such a statement to the staff. Any filing by the licensee will be forwarded to the Commission in conjunction with any staff memorandum recommending that the Commission take action as a result of the invesigation. Nothing in this rule shall supersede the application of our *ex parte* rules to situations described in § 1.1203 of these rules.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307))

[45 FR 65597, Oct. 3, 1980]

§ 1.89 Notice of violations.

(a) Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, any person who holds a license, permit or other authorization appearing to have violated any provision of the Communications Act or any provision of this chapter will, before revocation, suspension, or cease and desist proceedings are instituted, be served with a written notice calling these facts to his or her attention and requesting a statement concerning the matter. FCC Form 793 may be used for this purpose. The Notice of Violation may be combined with a Notice of Apparent Liability to Monetary Forfeiture. In such event, notwithstanding the Notice of Violation, the provisions of § 1.80 apply and not those of § 1.89.

(b) Within 10 days from receipt of notice or such other period as may be specified, the recipient shall send a written answer, in duplicate, directly to the Commission office originating the official notice. If an answer cannot be sent or an acknowledgment cannot be made within such 10-day period by reason of illness or other unavoidable circumstance, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay.

(c) The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. In every instance the answer shall contain a statement of action taken to correct the condition or omission complained of and to preclude its recurrence. In addition:

(1) If the notice relates to violations that may be due to the physical or electrical characteristics of transmitting apparatus and any new apparatus is to be installed, the answer shall state the date such apparatus was ordered, the name of the manufacturer, and the promised date of delivery. If

the installation of such apparatus requires a construction permit, the file number of the application shall be given, or if a file number has not been assigned by the Commission, such identification shall be given as will permit ready identification of the application.

(2) If the notice of violation relates to lack of attention to or improper operation of the transmitter, the name and license number of the operator in charge (where applicable) shall be given.

[48 FR 24890, June 3, 1983]

§ 1.91 Revocation and/or cease and desist proceedings; hearings.

(a) If it appears that a station license or construction permit should be revoked and/or that a cease and desist order should be issued, the Commission will issue an order directing the person to show cause why an order of revocation and/or a cease and desist order, as the facts may warrant, should not be issued.

(b) An order to show cause why an order of revocation and/or a cease and desist order should not be issued will designate for hearing the matters with respect to which the Commission is inquiring and will call upon the person to whom it is directed (the respondent) to file with the Commission a written appearance stating that the respondent will present evidence upon the matters specified in the order to show cause and, if required, appear before a presiding officer at a time and place to be determined, but no earlier than thirty days after the receipt of such order. However, if safety of life or property is involved, the order to show cause may specify a deadline of less than thirty days from the receipt of such order.

(c) To avail themselves of such opportunity for a hearing, respondents, personally or by counsel, shall file with the Commission, within twenty days of the mailing of the order or such shorter period as may be specified therein, a written appearance stating that they will present evidence on the matters specified in the order and, if required, appear before the presiding officer at a time and place to be determined. The presiding officer in his or her discretion may accept a late-filed appearance. However, a written appearance tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petition for acceptance of a late-filed appearance will be granted only if the presiding officer determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(d) Hearing proceedings on the matters specified in such orders to show cause shall accord with the practice and procedure prescribed in this subpart and subpart B of this part, with the following exceptions:

(1) In all such revocation and/or cease and desist hearings, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission; and

(2) The Commission may specify in a show cause order, when the circumstances of the proceeding require expedition, a time less than that prescribed in §§ 1.276 and 1.277 within which the initial decision in the proceeding shall become effective, exceptions to such initial decision must be filed, parties must file requests for oral argument, and parties must file notice of intention to participate in oral argument.

(e) Correction of or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or a cease and desist order should be issued.

(f) Any order of revocation and/or cease and desist order issued after hearing pursuant to this section shall include a statement of findings and the grounds therefor, shall specify the effective date of the order, and shall be served on the person to whom such order is directed.

(Sec. 312, 48 Stat. 1086, as amended; 47 U.S.C. 312)

[28 FR 12415, Nov. 22, 1963, as amended at 85 FR 63172, Oct. 6, 2020]

§ 1.92 Revocation and/or cease and desist proceedings; after waiver of hearing.

(a) After the issuance of an order to show cause, pursuant to § 1.91, designating a matter for hearing, the occurrence of any one of the following events or circumstances will constitute a waiver of such hearing and the proceeding thereafter will be conducted in accordance with the provisions of this section.

(1) The respondent fails to file a timely written appearance as prescribed in § 1.91(c) indicating that the respondent will present evidence on the matters specified in the order and, if required by the order, that the respondent will appear before the presiding officer.

(2) The respondent, having filed a timely written appearance as prescribed in § 1.91(c), fails in fact to present evidence on the matters specified in the order or appear before the presiding officer in person or by counsel at the time and place duly scheduled.

(3) The respondent files with the Commission, within the time specified for a written appearance in § 1.91(c), a written statement expressly waiving his or her rights to a hearing.

(b) When a hearing is waived under the provisions of paragraph (a) (1) or (3) of this section, a written statement signed by the respondent denying or seeking to mitigate or justify the circumstances or conduct complained of in the order to show cause may be submitted within the time specified in § 1.91(c). The Commission in its discretion may accept a late statement. However, a statement tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petitions for acceptance of a late statement will be granted only if the Commission determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(c) Whenever a hearing is waived by the occurrence of any of the events or circumstances listed in paragraph (a) of this section, the presiding officer shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing and terminating the hearing proceeding. A presiding officer other than the Commission also shall certify the case to the Commission. Such order shall be served upon the respondent.

(d) After a hearing proceeding has been terminated pursuant to paragraph (c) of this section, the Commission will act upon the matters specified in the order to show cause in the regular course of business. The Commission will determine on the basis of all the information available to it from any source, including such further proceedings as may be warranted, if a revocation order and/or a cease and desist order should issue, and if so, will issue such order. Otherwise, the Commission will issue an order dismissing the proceeding. All orders specified in this paragraph will include a statement of the findings of the Commission and the grounds and reasons therefor, will specify the effective date thereof, and will be served upon the respondent.

(e) Corrections or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or a cease and desist order should be issued.

(Sec. 312, 48 Stat. 1086, as amended; 47 U.S.C. 312)

[28 FR 12415, Nov. 22, 1963, as amended at 29 FR 6443, May 16, 1964; 37 FR 19372, Sept. 20, 1972; 85 FR 63173, Oct. 6, 2020]

§ 1.93 Consent orders.

(a) As used in this subpart, a ''consent order'' is a formal decree accepting an agreement between a party to an adjudicatory hearing proceeding held to determine whether that party has violated statutes or Commission rules or policies and the appropriate operating Bureau, with regard to such party's future compliance with such statutes, rules or policies, and disposing of all issues on which the proceeding was designated for hearing.

The order is issued by the officer designated to preside at the hearing proceeding.

(b) Where the interests of timely enforcement or compliance, the nature of the proceeding, and the public interest permit, the Commission, by its operating Bureaus, may negotiate a consent order with a party to secure future compliance with the law in exchange for prompt disposition of a matter subject to administrative adjudicative proceedings. Consent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license (see 47 U.S.C. 308 and 309).

[41 FR 14871, Apr. 8, 1976, as amended at 85 FR 63173, Oct. 6, 2020]

§ 1.94 Consent order procedures.

(a) Negotiations leading to a consent order may be initiated by the operating Bureau or by a party whose possible violations are issues in the proceeding. Negotiations may be initiated at any time after designation of a proceeding for hearing. If negotiations are initiated the presiding officer shall be notified. Parties shall be prepared at the initial prehearing conference to state whether they are at that time willing to enter negotiations. See § 1.248(c)(7). If either party is unwilling to enter negotiations, the hearing proceeding shall proceed. If the parties agree to enter negotiations, they will be afforded an appropriate opportunity to negotiate before the hearing is commenced.

(b) Other parties to the proceeding are entitled, but are not required, to participate in the negotiations, and may join in any agreement which is reached.

(c) Every agreement shall contain the following:

(1) An admission of all jurisdictional facts;

(2) A waiver of the usual procedures for preparation and review of an initial decision;

(3) A waiver of the right of judicial review or otherwise to challenge or contest the validity of the consent order;

(4) A statement that the designation order may be used in construing the consent order;

(5) A statement that the agreement shall become a part of the record of the proceeding only if the consent order is signed by the presiding officer and the time for review has passed without rejection of the order by the Commission;

(6) A statement that the agreement is for purposes of settlement only and that its signing does not constitute an admission by any party of any violation of law, rules or policy (see 18 U.S.C. 6002); and

(7) A draft order for signature of the presiding officer resolving by consent, and for the future, all issues specified in the designation order.

(d) If agreement is reached, it shall be submitted to the presiding officer, who shall either sign the order, reject the agreement, or suggest to the parties that negotiations continue on such portion of the agreement as the presiding officer considers unsatisfactory or on matters not reached in the agreement. If the presiding officer signs the consent order, the record shall be closed. If the presiding officer rejects the agreement, the hearing proceeding shall continue. If the presiding officer suggests further negotiations and the parties agree to resume negotiating, the presiding officer may, in his or her discretion, decide whether to hold the hearing proceeding in abeyance pending the negotiations.

(e) Any party to the proceeding who has not joined in any agreement which is reached may appeal the consent order under § 1.302, and the Commission may review the agreement on its own motion under the provisions of that section. If the Commission rejects the consent order, the proceeding will be remanded for further proceedings. If the Commission does not reject the consent order, it shall be entered in the record as a final order and is subject to judicial review on the initiative only of parties to the proceeding who did not join in the agreement. The Commission may revise the agreement and consent order. In that event, private parties to the agreement may either accept the revision or withdraw from the agreement. If the party whose possible violations are issues in the proceeding withdraws from the agreement, the consent order will not be issued or made a part

of the record, and the proceeding will be remanded for further proceedings.

(f) The provisions of this section shall not alter any existing procedure for informal settlement of any matter prior to designation for hearing (see, e.g., 47 U.S.C. 208) or for summary decision after designation for hearing.

(g) Consent orders, pleadings relating thereto, and Commission orders with respect thereto shall be served on parties to the proceeding. Public notice will be given of orders issued by the Commission or by the presiding officer. Negotiating papers constitute work product, are available to parties participating in negotiations, but are not routinely available for public inspection.

[41 FR 14871, Apr. 8, 1976, as amended at 85 FR 63173, Oct. 6, 2020]

§ 1.95 Violation of consent orders.

Violation of a consent order shall subject the consenting party to any and all sanctions which could have been imposed in the proceeding resulting in the consent order if all of the issues in that proceeding had been decided against the consenting party and to any further sanctions for violation noted as agreed upon in the consent order. The Commission shall have the burden of showing that the consent order has been violated in some (but not in every) respect. Violation of the consent order and the sanctions to be imposed shall be the only issues considered in a proceeding concerning such an alleged violation.

[41 FR 14871, Apr. 8, 1976]

RECONSIDERATION AND REVIEW OF ACTIONS TAKEN BY THE COMMISSION AND PURSUANT TO DELEGATED AUTHORITY; EFFECTIVE DATES AND FINALITY DATES OF ACTIONS

§ 1.101 General provisions.

Under section 5(c) of the Communications Act of 1934, as amended, the Commission is authorized, by rule or order, to delegate certain of its functions to a panel of commissioners, an individual commissioner, an employee board, or an individual employee. Section 0.201(a) of this chapter describes in general terms the basic categories of delegations which are made by the Commission. Subpart B of part 0 of this chapter sets forth all delegations which have been made by rule. Sections 1.102 through 1.117 set forth procedural rules governing reconsideration and review of actions taken pursuant to authority delegated under section 5(c) of the Communications Act, and reconsideration of actions taken by the Commission. As used in §§ 1.102 through 1.117, the term designated authority means any person, panel, or board which has been authorized by rule or order to exercise authority under section 5(c) of the Communications Act.

[76 FR 70908, Nov. 16, 2011]

§ 1.102 Effective dates of actions taken pursuant to delegated authority.

(a) *Final actions following review of an initial decision.* (1) Final decisions of a commissioner, or panel of commissioners following review of an initial decision shall be effective 40 days after public release of the full text of such final decision.

(2) If a petition for reconsideration of such final decision is filed, the effect of the decision is stayed until 40 days after release of the final order disposing of the petition.

(3) If an application for review of such final decision is filed, or if the Commission on its own motion orders the record of the proceeding before it for review, the effect of the decision is stayed until the Commission's review of the proceeding has been completed.

(b) *Non-hearing and interlocutory actions.* (1) Non-hearing or interlocutory actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action, or in the event such a document is not released, upon release of a public notice announcing the action in question.

(2) If a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration. Petitions for reconsideration of interlocutory actions will not be entertained.

(3) If an application for review of a non-hearing or interlocutory action is

filed, or if the Commission reviews the action on its own motion, the Commission may in its discretion stay the effect of any such action until its review of the matters at issue has been completed.

[28 FR 12415, Nov. 22, 1963, as amended at 62 FR 4170, Jan. 29, 1997]

§ 1.103 Effective dates of Commission actions; finality of Commission actions.

(a) Unless otherwise specified by law or Commission rule (e.g. §§1.102 and 1.427), the effective date of any Commission action shall be the date of public notice of such action as that latter date is defined in §1.4(b) of these rules: *Provided*, That the Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action. The designation of an earlier or later effective date shall have no effect on any pleading periods.

(b) Notwithstanding any determinations made under paragraph (a) of this section, Commission action shall be deemed final, for purposes of seeking reconsideration at the Commission or judicial review, on the date of public notice as defined in §1.4(b) of these rules.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[46 FR 18556, Mar. 25, 1981]

§ 1.104 Preserving the right of review; deferred consideration of application for review.

(a) The provisions of this section apply to all final actions taken pursuant to delegated authority, including final actions taken by members of the Commission's staff on nonhearing matters. They do not apply to interlocutory actions of a presiding officer in hearing proceedings, or to orders designating a matter for hearing issued under delegated authority. *See* §§1.106(a) and 1.115(e).

(b) Any person desiring Commission consideration of a final action taken pursuant to delegated authority shall file either a petition for reconsideration or an application for review (but not both) within 30 days from the date of public notice of such action, as that date is defined in §1.4(b). The petition for reconsideration will be acted on by the designated authority or referred by such authority to the Commission: Provided that a petition for reconsideration of an order designating a matter for hearing will in all cases be referred to the Commission. The application for review will be acted upon by the Commission, except in those cases where a Bureau or Office has been delegated authority to dismiss an application for review.

NOTE: In those cases where the Commission does not intend to release a document containing the full text of its action, it will state that fact in the public notice announcing its action.

(c) If in any matter one party files a petition for reconsideration and a second party files an application for review, the Commission will withhold action on the application for review until final action has been taken on the petition for reconsideration.

(d) Any person who has filed a petition for reconsideration may file an application for review within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. If a petition for reconsideration has been filed, any person who has filed an application for review may: (1) Withdraw his application for review, or (2) substitute an amended application therefor.

[28 FR 12415, Nov. 22, 1963, as amended at 41 FR 14871, Apr. 8, 1976; 44 FR 60294, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 62 FR 4170, Jan. 29, 1997; 85 FR 63173, Oct. 6, 2020; 86 FR 12547, Mar. 4, 2021]

§ 1.106 Petitions for reconsideration in non-rulemaking proceedings.

(a)(1) Except as provided in paragraphs (b)(3) and (p) of this section, petitions requesting reconsideration of a final Commission action in non-rulemaking proceedings will be acted on by the Commission. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to

an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. (For provisions governing reconsideration of Commission action in notice and comment rulemaking proceedings, *see* §1.429. This §1.106 does not govern reconsideration of such actions.)

(2) Within the period allowed for filing a petition for reconsideration, any party to the proceeding may request the presiding officer to certify to the Commission the question as to whether, on policy in effect at the time of designation or adopted since designation, and undisputed facts, a hearing should be held. If the presiding officer finds that there is substantial doubt, on established policy and undisputed facts, that a hearing should be held, he will certify the policy question to the Commission with a statement to that effect. No appeal may be filed from an order denying such a request. See also, §§1.229 and 1.251.

(b)(1) Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present:

(i) The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or

(ii) The petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.

(3) A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.

(c) In the case of any order other than an order denying an application for review, a petition for reconsideration which relies on facts or arguments not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts or arguments fall within one or more of the categories set forth in §1.106(b)(2); or

(2) The Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.

(d)(1) A petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed. The petition shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests.

(2) A petition for reconsideration of a decision that sets forth formal findings of fact and conclusions of law shall also cite the findings and/or conclusions which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and/or conclusions should be changed. The petition may request that additional findings of fact and/or conclusions of law be made.

(e) Where a petition for reconsideration is based upon a claim of electrical interference, under appropriate rules in this chapter, to an existing station or a station for which a construction permit is outstanding, such petition, in addition to meeting the other requirements of this section, must be accompanied by an affidavit of a qualified radio engineer. Such affidavit shall show, either by following the procedures set forth in this chapter for determining interference in the absence of measurements, or by actual measurements made in accordance

with the methods prescribed in this chapter, that electrical interference will be caused to the station within its normally protected contour.

(f) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules, and shall be served upon parties to the proceeding. The petition for reconsideration shall not exceed 25 double spaced typewritten pages. No supplement or addition to a petition for reconsideration which has not been acted upon by the Commission or by the designated authority, filed after expiration of the 30 day period, will be considered except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefor.

(g) Oppositions to a petition for reconsideration shall be filed within 10 days after the petition is filed, and shall be served upon petitioner and parties to the proceeding. Oppositions shall not exceed 25 double spaced typewritten pages.

(h) Petitioner may reply to oppositions within seven days after the last day for filing oppositions, and any such reply shall be served upon parties to the proceeding. Replies shall not exceed 10 double spaced typewritten pages, and shall be limited to matters raised in the opposition.

(i) Petitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52 and, except for those related to licensing matters in the Wireless Radio Service and addressed in paragraph (o) of this section, shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System or other electronic filing system (such as ULS). Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed. Parties filing in electronic form need only submit one copy.

(j) The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Where the petition for reconsideration relates to an instrument of authorization granted without hearing, the Commission or designated authority will take such action within 90 days after the petition is filed.

(k)(1) If the Commission or the designated authority grants the petition for reconsideration in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which reconsideration is sought;

(ii) Remand the matter to a bureau or other Commission personnel for such further proceedings, including rehearing, as may be appropriate; or

(iii) Order such other proceedings as may be necessary or appropriate.

(2) If the Commission or designated authority initiates further proceedings, a ruling on the merits of the matter will be deferred pending completion of such proceedings. Following completion of such further proceedings, the Commission or designated authority may affirm, reverse, or modify its original order, or it may set aside the order and remand the matter for such further proceedings, including rehearing, as may be appropriate.

(3) Any order disposing of a petition for reconsideration which reverses or modifies the original order is subject to the same provisions with respect to reconsideration as the original order. In no event, however, shall a ruling which denies a petition for reconsideration be considered a modification of the original order. A petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious.

NOTE: For purposes of this section, the word ''order'' refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the ''memorandum opinion'' or other material which often accompany and explain the order.

(l) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence

which the Commission or the designated authority believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

(m) The filing of a petition for reconsideration is not a condition precedent to judicial review of any action taken by the Commission or by the designated authority, except where the person seeking such review was not a party to the proceeding resulting in the action, or relies on questions of fact or law upon which the Commission or designated authority has been afforded no opportunity to pass. (See §1.115(c).) Persons in those categories who meet the requirements of this section may qualify to seek judicial review by filing a petition for reconsideration.

(n) Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof. However, upon good cause shown, the Commission will stay the effectiveness of its order or requirement pending a decision on the petition for reconsideration. (This paragraph applies only to actions of the Commission en banc. For provisions applicable to actions under delegated authority, see §1.102.)

(o) Petitions for reconsideration of licensing actions, as well as oppositions and replies thereto, that are filed with respect to the Wireless Radio Services, must be filed electronically via ULS.

(p) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

(1) Fail to identify any material error, omission, or reason warranting reconsideration;

(2) Rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of paragraphs (b)(2), (b)(3), or (c) of this section;

(3) Rely on arguments that have been fully considered and rejected by the Commission within the same proceeding;

(4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (d) of this section;

(5) Relate to matters outside the scope of the order for which reconsideration is sought;

(6) Omit information required by these rules to be included with a petition for reconsideration, such as the affidavit required by paragraph (e) of this section (relating to electrical interference);

(7) Fail to comply with the procedural requirements set forth in paragraphs (f) and (i) of this section;

(8) relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under paragraph (c) of this section; or

(9) Are untimely.

(Secs. 4, 303, 307, 405, 48 Stat., as amended, 1066, 1082, 1083, 1095; 47 U.S.C. 154, 303, 307, 405)

[28 FR 12415, Nov. 22, 1963, as amended at 37 FR 7507, Apr. 15, 1972; 41 FR 1287, Jan. 7, 1976; 44 FR 60294, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 62 FR 4170, Jan. 29, 1997; 63 FR 68920, Dec. 14, 1998; 76 FR 24391, May 2, 2011; 85 FR 85529, Dec. 29, 2020]

§1.108 Reconsideration on Commission's own motion.

The Commission may, on its own motion, reconsider any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in §1.4(b). When acting on its own motion under this section, the Commission may take any action it could take in acting on a petition for reconsideration, as set forth in §1.106(k).

[76 FR 24392, May 2, 2011]

§1.110 Partial grants; rejection and designation for hearing.

Where the Commission without a hearing grants any application in part, or with any privileges, terms, or conditions other than those requested, or subject to any interference that may result to a station if designated application or applications are subsequently

granted, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing.

§ 1.113 Action modified or set aside by person, panel, or board.

(a) Within 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion.

(b) Within 60 days after notice of any sanction imposed under delegated authority has been served on the person affected, the person, panel, or board which imposed the sanction may modify or set it aside on its own motion.

(c) Petitions for reconsideration and applications for review shall be directed to the actions as thus modified, and the time for filing such pleadings shall be computed from the date upon which public notice of the modified action is given or notice of the modified sanction is served on the person affected.

§ 1.115 Application for review of action taken pursuant to delegated authority.

(a) Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission. Any person filing an application for review who has not previously participated in the proceeding shall include with his application a statement describing with particularity the manner in which he is aggrieved by the action taken and showing good reason why it was not possible for him to participate in the earlier stages of the proceeding. Any application for review which fails to make an adequate showing in this respect will be dismissed.

(b)(1) The application for review shall concisely and plainly state the questions presented for review with reference, where appropriate, to the findings of fact or conclusions of law.

(2) The application for review shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented:

(i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.

(ii) The action involves a question of law or policy which has not previously been resolved by the Commission.

(iii) The action involves application of a precedent or policy which should be overturned or revised.

(iv) An erroneous finding as to an important or material question of fact.

(v) Prejudicial procedural error.

(3) The application for review shall state with particularity the respects in which the action taken by the designated authority should be changed.

(4) The application for review shall state the form of relief sought and, subject to this requirement, may contain alternative requests.

(c) No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.

NOTE: Subject to the requirements of § 1.106, new questions of fact or law may be presented to the designated authority in a petition for reconsideration.

(d) Except as provided in paragraph (e) of this section and in § 0.461(j) of this chapter, the application for review and any supplemental thereto shall be filed within 30 days of public notice of such action, as that date is defined in § 1.4(b). Opposition to the application shall be filed within 15 days after the application for review is filed. Except as provided in paragraph (e)(1) of this section, replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the opposition.

(e)(1) Applications for review of an order designating a matter for hearing that was issued under delegated authority shall be deferred until exceptions to the initial decision in the case

are filed, unless the presiding officer certifies such an application for review to the Commission. A matter shall be certified to the Commission if the presiding officer determines that the matter involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate consideration of the question would materially expedite the ultimate resolution of the litigation. A request to certify a matter to the Commission shall be filed with the presiding officer within 5 days after the designation order is released. A ruling refusing to certify a matter to the Commission is not appealable. Any application for review authorized by the presiding officer shall be filed within 5 days after the order certifying the matter to the Commission is released or such a ruling is made. Oppositions shall be filed within 5 days after the application for review is filed. Replies to oppositions shall be filed only if they are requested by the Commission. Replies (if allowed) shall be filed within 5 days after they are requested. The Commission may dismiss, without stating reasons, an application for review that has been certified, and direct that the objections to the order designating the matter for hearing be deferred and raised when exceptions in the initial decision in the case are filed.

(2) Applications for review of final staff decisions issued on delegated authority in formal complaint proceedings on the Enforcement Bureau's Accelerated Docket (see, *e.g.*, §1.730) shall be filed within 15 days of public notice of the decision, as that date is defined in §1.4(b). These applications for review oppositions and replies in Accelerated Docket proceedings shall be served on parties to the proceeding by hand or facsimile transmission.

(f) Applications for review, oppositions, and replies shall conform to the requirements of §§1.49, 1.51, and 1.52, and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554. Except as provided below, applications for review and oppositions thereto shall not exceed 25 double-space typewritten pages. Applications for review of interlocutory actions in hearing proceedings (including designation orders) and oppositions thereto shall not exceed 5 double-spaced typewritten pages. When permitted (see paragraph (e)(1) of this section), reply pleadings shall not exceed 5 double-spaced typewritten pages. The application for review shall be served upon the parties to the proceeding. Oppositions to the application for review shall be served on the person seeking review and on parties to the proceeding. When permitted (see paragraph (e)(1) of this section), replies to the opposition(s) to the application for review shall be served on the person(s) opposing the application for review and on parties to the proceeding.

(g) The Commission may grant the application for review in whole or in part, or it may deny the application with or without specifying reasons therefor. A petition requesting reconsideration of a ruling which denies an application for review will be entertained only if one or more of the following circumstances is present:

(1) The petition relies on facts which related to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or

(2) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

(h)(1) If the Commission grants the application for review in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which review is sought;

(ii) Remand the matter to the designated authority for reconsideration in accordance with its instructions, and, if an evidentiary hearing has been held, the remand may be to the person(s) who conducted the hearing; or

(iii) Order such other proceedings, including briefs and oral argument, as may be necessary or appropriate.

(2) In the event the Commission orders further proceedings, it may stay the effect of the order from which review is sought. (See §1.102.) Following the completion of such further proceedings the Commission may affirm, reverse or modify the order from which review is sought, or it may set aside the order and remand the matter to the

designated authority for reconsideration in accordance with its instructions. If an evidentiary hearing has been held, the Commission may remand the matter to the person(s) who conducted the hearing for rehearing on such issues and in accordance with such instructions as may be appropriate.

NOTE: For purposes of this section, the word ''order'' refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the ''memorandum opinion'' or other material which often accompany and explain the order.

(i) An order of the Commission which reverses or modifies the action taken pursuant to delegated authority is subject to the same provisions with respect to reconsideration as an original order of the Commission. In no event, however, shall a ruling which denies an application for review be considered a modification of the action taken pursuant to delegated authority.

(j) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

(k) The filing of an application for review shall be a condition precedent to judicial review of any action taken pursuant to delegated authority.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[28 FR 12415, Nov. 22, 1963, as amended at 41 FR 14871, Apr. 8, 1976; 44 FR 60295, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 48 FR 12719, Mar. 28, 1983; 50 FR 39000, Sept. 26, 1985; 54 FR 40392, Oct. 2, 1989; 55 FR 36641, Sept. 6, 1990; 57 FR 19387, May 6, 1992; 62 FR 4170, Jan. 29, 1997; 63 FR 41446, Aug. 4, 1998; 67 FR 13223, Mar. 21, 2002; 76 FR 70908, Nov. 16, 2011; 82 FR 4197, Jan. 13, 2017; 85 FR 63173, Oct. 6, 2020]

§ 1.117 Review on motion of the Commission.

(a) Within 40 days after public notice is given of any action taken pursuant to delegated authority, the Commission may on its own motion order the record of the proceeding before it for review.

(b) If the Commission reviews the proceeding on its own motion, it may order such further procedure as may be useful to it in its review of the action taken pursuant to delegated authority.

(c) With or without such further procedure, the Commission may either affirm, reverse, modify, or set aside the action taken, or remand the proceeding to the designated authority for reconsideration in accordance with its instructions. If an evidentiary hearing has been held, the Commission may remand the proceeding to the person(s) who conducted the hearing for rehearing on such issues and in accordance with such instructions as may be appropriate. An order of the Commission which reverses or modifies the action taken pursuant to delegated authority, or remands the matter for further proceedings, is subject to the same provisions with respect to reconsideration as an original action of the Commission.

Subpart B—Hearing Proceedings

SOURCE: 28 FR 12425, Nov. 22, 1963, unless otherwise noted.

GENERAL

§ 1.201 Scope.

This subpart shall be applicable to the following cases which have been designated for hearing:

(a) Adjudication (as defined by the Administrative Procedure Act); and

(b) Rule making proceedings which are required by law to be made on the record after opportunity for a Commission hearing.

NOTE 1 TO § 1.201: For special provisions relating to hearing proceedings under this subpart that the Commission determines shall be conducted and resolved on a written record, see §§ 1.370 through 1.377.

NOTE 2 TO § 1.201: For special provisions relating to AM broadcast station applications involving other North American countries see § 73.23.

[28 FR 12425, Nov. 22, 1963, as amended at 51 FR 32088, Sept. 9, 1986; 85 FR 63174, Oct. 6, 2020]

§ 1.202 Official reporter; transcript.

The Commission will designate an official reporter for the recording and

transcribing of hearing proceedings as necessary. Transcripts will be transmitted to the Secretary for inclusion in the Commission's Electronic Comment Filing System.

[85 FR 63174, Oct. 6, 2020]

§ 1.203 The record.

The evidence submitted by the parties, together with all papers and requests filed in the proceeding and any transcripts, shall constitute the exclusive record for decision. Where any decision rests on official notice of a material fact not appearing in the record, any party shall on timely request be afforded an opportunity to show the contrary.

(5 U.S.C. 556; 47 U.S.C. 154, 159, 208, 209, 214, 309, 312, 316, and 409)

[85 FR 63174, Oct. 6, 2020]

§ 1.204 Pleadings; definition.

As used in this subpart, the term *pleading* means any written notice, motion, petition, request, opposition, reply, brief, proposed findings, exceptions, memorandum of law, or other paper filed with the Commission in a hearing proceeding. It does not include exhibits or documents offered in evidence. See § 1.356.

[29 FR 8219, June 30, 1964]

§ 1.205 Continuances and extensions.

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time may be granted by the Commission or the presiding officer upon motion for good cause shown, unless the time for performance or filing is limited by statute.

§ 1.207 Interlocutory matters, reconsideration and review; cross references.

(a) Rules governing interlocutory pleadings in hearing proceedings are set forth in §§ 1.291 through 1.298.

(b) Rules governing appeal from rulings made by the presiding officer are set forth as §§ 1.301 and 1.302.

(c) Rules governing the reconsideration and review of actions taken pursuant to delegated authority, and the reconsideration of actions taken by the Commission, are set forth in §§ 1.101 through 1.117.

[28 FR 12425, Nov. 22, 1963, as amended at 29 FR 6443, May 16, 1964; 36 FR 19439, Oct. 6, 1971; 76 FR 70908, Nov. 16, 2011]

§ 1.209 Identification of responsible officer in caption to pleading.

Each pleading filed in a hearing proceeding shall indicate in its caption whether it is to be acted upon by the Commission or, if the Commission is not the presiding officer, by the presiding officer. Unless it is to be acted upon by the Commission, the presiding officer shall be identified by name.

[85 FR 63174, Oct. 6, 2020]

§ 1.210 Electronic filing.

All pleadings filed in a hearing proceeding, as well as all letters, documents, or other written submissions, shall be filed using the Commission's Electronic Comment Filing System, excluding confidential material as set forth in § 1.314. A courtesy copy of all submissions shall be contemporaneously provided to the presiding officer, as directed by the Commission.

[85 FR 63174, Oct. 6, 2020]

§ 1.211 Service.

Except as otherwise expressly provided in this chapter, all pleadings filed in a hearing proceeding shall be served upon all other counsel in the proceeding or, if a party is not represented by counsel, then upon such party. All such papers shall be accompanied by proof of service. For provisions governing the manner of service, see § 1.47.

[29 FR 8219, June 30, 1964]

PARTICIPANTS AND ISSUES

§ 1.221 Notice of hearing; appearances.

(a) Upon designation of an application for hearing, the Commission issues an order containing the following:

(1) A statement as to the reasons for the Commission's action.

(2) A statement as to the matters of fact and law involved, and the issues upon which the application will be heard.

(3) A statement as to the time, place, and nature of the hearing. (If the time and place are not specified, the order will indicate that the time and place will be specified at a later date.)

(4) A statement as to the legal authority and jurisdiction under which the hearing is to be held.

(b) The order designating an application for hearing shall be mailed to the applicant and the order, or a summary thereof, shall be published in the FEDERAL REGISTER. Reasonable notice of hearing will be given to the parties in all proceedings.

(c) In order to avail themselves of the opportunity to be heard, applicants or their attorney shall file, within 20 days of the mailing of the order designating a matter for hearing, a written appearance stating that the applicant will present evidence on the matters specified in the order and, if required by the order, appear before the presiding officer at a date and time to be determined. Where an applicant fails to file such a written appearance within the time specified, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the application will be dismissed with prejudice for failure to prosecute.

(d) The Commission will on its own motion name as parties to the hearing proceeding any person found to be a party in interest.

(e) In order to avail themselves of the opportunity to be heard, any persons named as parties pursuant to paragraph (d) of this section shall, within 20 days of the mailing of the order designating them as parties to a hearing proceeding, file personally or by attorney a written appearance that they will present evidence on the matters specified in the order and, if required by the order, appear before the presiding officer at a date and time to be determined. Any persons so named who fail to file this written appearance within the time specified, shall, unless good cause for such failure is shown, forfeit their hearing rights.

(f)(1) For program carriage complaints filed pursuant to § 76.1302 of this chapter that the Chief, Media Bureau refers to a presiding officer, each party, in person or by attorney, shall file a written appearance within five calendar days after the party informs the presiding officer that it elects not to pursue alternative dispute resolution pursuant to § 76.7(g)(2) of this chapter or, if the parties have mutually elected to pursue alternative dispute resolution pursuant to § 76.7(g)(2) of this chapter, within five calendar days after the parties inform the presiding officer that they have failed to resolve their dispute through alternative dispute resolution. The written appearance shall state that the party will appear for hearing and present evidence on the issues specified in the hearing designation order.

(2) If the complainant fails to file a written appearance by this deadline, or fails to file prior to the deadline either a petition to dismiss the proceeding without prejudice or a petition to accept, for good cause shown, a written appearance beyond such deadline, the presiding officer shall dismiss the complaint with prejudice for failure to prosecute.

(3) If the defendant fails to file a written appearance by this deadline, or fails to file prior to this deadline a petition to accept, for good cause shown, a written appearance beyond such deadline, its opportunity to present evidence at hearing will be deemed to have been waived. If the hearing is so waived, the presiding officer shall expeditiously terminate the proceeding and certify to the Commission the complaint for resolution based on the existing record. When the Commission has designated itself as the presiding officer, it shall expeditiously terminate the proceeding and resolve the complaint based on the existing record.

(5 U.S.C. 554; 47 U.S.C. 154, 159, 208, 209, 214, 309, 312, 316, and 409)

[28 FR 12424, Nov. 22, 1963, as amended at 51 FR 19347, May 29, 1986; 52 FR 5288, Feb. 20, 1987; 55 FR 19154, May 8, 1990; 56 FR 25638, June 5, 1991; 64 FR 60725, Nov. 8, 1999; 66 FR 47895, Sept. 14, 2001; 67 FR 13223, Mar. 21, 2002; 76 FR 60672, Sept. 29, 2011; 85 FR 63174, Oct. 6, 2020]

§ 1.223 Petitions to intervene.

(a) Where the order designating a matter for hearing has failed to notify

and name as a party to the hearing proceeding any person who qualifies as a party in interest, such person may acquire the status of a party by filing, under oath and not more than 30 days after the publication in the FEDERAL REGISTER of the hearing issues or any substantial amendment thereto, a petition for intervention showing the basis of its interest. Where the person's status as a party in interest is established, the petition to intervene will be granted.

(b) Any other person desiring to participate as a party in any hearing proceeding may file a petition for leave to intervene not later than 30 days after the publication in the FEDERAL REGISTER of the full text or a summary of the order designating the matter for hearing or any substantial amendment thereto. The petition must set forth the interest of petitioner in the proceedings, must show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition. The presiding officer, in his or her discretion, may grant or deny such petition or may permit intervention by such persons limited to a particular stage of the proceeding.

(c) Any person desiring to file a petition for leave to intervene later than 30 days after the publication in the FEDERAL REGISTER of the full text or a summary of the order designating the matter for hearing or any substantial amendment thereto shall set forth the interest of petitioner in the proceeding, show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must set forth reasons why it was not possible to file a petition within the time prescribed by paragraphs (a) and (b) of this section. If, in the opinion of the presiding officer, good cause is shown for the delay in filing, the presiding officer may in his or her discretion grant such petition or may permit intervention limited to particular issues or to a particular stage of the proceeding.

(Sec. 309, 48 Stat. 1085, as amended; 47 U.S.C. 309)

[85 FR 63175, Oct. 6, 2020]

§ 1.224 Motion to proceed in forma pauperis.

(a) A motion to proceed in forma pauperis may be filed by an individual, a corporation, and unincorporated entity, an association or other similar group, if the moving party is either of the following:

(1) A respondent in a revocation proceeding, or a renewal applicant, who cannot carry on his livelihood without the radio license at stake in the proceeding; or

(2) An intervenor in a hearing proceeding who is in a position to introduce testimony which is of probable decisional significance, on a matter of substantial public interest importance, which cannot, or apparently will not, be introduced by other parties to the proceeding, and who is not seeking personal financial gain.

(b) In the case of a licensee, the motion to proceed in forma pauperis shall contain specific allegations of fact sufficient to show that the moving party is eligible under paragraph (a) of this section and that he cannot, because of his poverty, pay the expenses of litigation and still be able to provide himself and his dependents with the necessities of life. Such allegations of fact shall be supported by affidavit of a person or persons with personal knowledge thereof. The information submitted shall detail the income and assets of the individual and his financial obligations and responsibilities, and shall contain an estimate of the cost of participation in the proceeding. Personal financial information may be submitted to the presiding officer in confidence.

(c)(1) In the case of an individual intervenor, the motion to proceed in forma pauperis shall contain specific allegations of fact sufficient to show that he is eligible under paragraph (a) of this section and that he has dedicated financial resources to sustain his participation which are reasonable in light of his personal resources and other demands upon them but are inadequate for effective participation in

the proceeding. Such allegations of fact shall be supported by affidavit of a person or persons with personal knowledge thereof. The information submitted shall detail the income and assets of the individual and his immediate family and his financial obligations and responsibilities, and shall contain an estimate of the cost of participation. Personal financial information may be submitted to the presiding officer in confidence.

(2) In the case of an intervening group, the motion to proceed in forma pauperis shall contain specific allegations of fact sufficient to show that the moving party is eligible under paragraph (a) of this section and that it cannot pay the expenses of litigation and still be able to carry out the activities and purposes for which it was organized. Such allegations of fact shall be supported by affidavit of the President and Treasurer of the group, and/or by other persons having personal knowledge thereof. The information submitted shall include a copy of the corporate charter or other documents that describe the activities and purposes of the organization; a current balance sheet and profit and loss statement; facts showing, under all the circumstances, that it would not be reasonable to expect added resources of individuals composing the group to be pooled to meet the expenses of participating in the proceeding; and an estimate of the cost of participation. Personal financial information pertaining to members of the group may be submitted to the presiding officer in confidence.

(d) If the motion is granted, the presiding officer may direct that a free copy of the transcript of testimony be made available to the moving party and may relax the rules of procedure in any manner which will ease his financial burden, is fair to other parties to the proceeding, and does not involve the payment of appropriated funds to a party.

[41 FR 53021, Dec. 3, 1976]

§ 1.225 Participation by non-parties; consideration of communications.

(a) Any person who wishes to appear and give evidence on any matter and who so advises the Secretary, will be notified by the Secretary if that matter is designated for hearing. In the case of requests bearing more than one signature, notice of hearing will be given to the person first signing unless the request indicates that such notice should be sent to someone other than such person.

(b) No persons shall be precluded from giving any relevant, material, and competent testimony because they lack a sufficient interest to justify their intervention as parties in the matter.

(c) No communication will be considered in determining the merits of any matter unless it has been received into evidence. The admissibility of any communication shall be governed by the applicable rules of evidence in § 1.351, and no communication shall be admissible on the basis of a stipulation unless Commission counsel as well as counsel for all of the parties shall join in such stipulation.

[28 FR 12425, Nov. 22, 1963, as amended at 85 FR 63175, Oct. 6, 2020]

§ 1.227 Consolidations.

The Commission, upon motion or upon its own motion, may, where such action will best conduce to the proper dispatch of business and to the ends of justice, consolidate in a hearing proceeding any cases that involve the same applicant or substantially the same issues, or that present conflicting claims.

[85 FR 63175, Oct. 6, 2020]

§ 1.229 Motions to enlarge, change, or delete issues.

(a) A motion to enlarge, change or delete the issues may be filed by any party to a hearing proceeding. Except as provided for in paragraph (b) of this section, such motions must be filed within 15 days after the full text or a summary of the order designating the case for hearing has been published in the FEDERAL REGISTER.

(b)(1) For program carriage complaints filed pursuant to § 76.1302 of this chapter that the Chief, Media Bureau refers to a presiding officer, such motions shall be filed within 15 calendar days after the deadline for submitting written appearances pursuant to

§ 1.221(f), except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the FEDERAL REGISTER. (*See* § 1.223).

(2) Any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a) and (b)(1) of this section shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

(c) In the absence of good cause for late filing of a motion to modify the issues, the motion to enlarge will be considered fully on its merits if (and only if) initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing.

(d) Such motions, opposition thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof. The failure to file an opposition or a reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

(e) In any case in which the presiding officer grants a motion to enlarge the issues to inquire into allegations that an applicant made misrepresentations to the Commission or engaged in other misconduct during the application process, the enlarged issues include notice that, after hearings on the enlarged issue and upon a finding that the alleged misconduct occurred and warrants such penalty, in addition to or in lieu of denying the application, the applicant may be liable for a forfeiture of up to the maximum statutory amount. See 47 U.S.C. 503(b)(2)(A).

[41 FR 14872, Apr. 8, 1976, as amended at 44 FR 34947, June 18, 1979; 51 FR 19347, May 29, 1986; 56 FR 792, Jan. 9, 1991; 56 FR 25639, June 5, 1991; 62 FR 4171, Jan. 29, 1997; 76 FR 60672, Sept. 29, 2011; 76 FR 70908, Nov. 16, 2011; 78 FR 5745, Jan. 28, 2013; 85 FR 63175, Oct. 6, 2020]

PRESIDING OFFICER

§ 1.241 Designation of presiding officer.

(a) Hearing proceedings will be conducted by a presiding officer. The designated presiding officer will be identified in the order designating a matter for hearing. Only the Commission, one or more commissioners, or an administrative law judge designated pursuant to 5 U.S.C. 3105 may be designated as a presiding officer. Unless otherwise stated, the term *presiding officer* will include the Commission when the Commission designates itself to preside over a hearing proceeding.

(b) If a presiding officer becomes unavailable during the course of a hearing proceeding, another presiding officer will be designated.

(5 U.S.C. 556; 47 U.S.C. 154, 159, 208, 209, 214, 309, 312, 316, and 409)

[85 FR 63176, Oct. 6, 2020]

§ 1.242 Appointment of case manager when Commission is the presiding officer.

When the Commission designates itself as the presiding officer in a hearing proceeding, it may delegate authority to a case manager to develop the record in a written hearing (see §§ 1.370 through 1.377). The case manager must be a staff attorney who qualifies as a neutral under 5 U.S.C. 571 and 573. The Commission shall not designate any of the following persons to serve as case manager in a case, and they may not advise or assist the case manager: Staff who participated in identifying the specific issues designated for hearing; staff who have taken or will take an active part in investigating, prosecuting, or advocating in the case; or staff who are expected to investigate and act upon petitions to deny (including challenges thereto). A case manager shall have authority to perform

any of the functions generally performed by the presiding officer, except that a case manager shall have no authority to resolve any new or novel issues, to issue an order on the merits resolving any issue designated for hearing in a case, to issue an order on the merits of any motion for summary decision filed under § 1.251, or to perform any other functions that the Commission reserves to itself in the order appointing a case manager.

[85 FR 63176, Oct. 6, 2020]

§ 1.243 Authority of presiding officer.

From the time the presiding officer is designated until issuance of the presiding officer's decision or the transfer of the proceeding to the Commission or to another presiding officer, the presiding officer shall have such authority as granted by law and by the provisions of this chapter, including authority to:

(a) Administer oaths and affirmations;

(b) Issue subpenas;

(c) Examine witnesses;

(d) Rule upon questions of evidence;

(e) Take or cause depositions to be taken;

(f) Regulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaging in contemptuous conduct or otherwise disrupting the proceedings;

(g) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law upon which the presiding officer or the Commission is required to rule during the course of the hearing proceeding;

(h) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(i) Dispose of procedural requests and ancillary matters, as appropriate;

(j) Take actions and make decisions in conformity with governing law;

(k) Act on motions to enlarge, modify or delete the hearing issues;

(l) Act on motions to proceed in forma pauperis pursuant to § 1.224;

(m) Decide a matter upon the existing record or request additional information from the parties; and

(n) Issue such orders and conduct such proceedings as will best conduce to the proper dispatch of business and the ends of justice.

(5 U.S.C. 556; 47 U.S.C. 154, 159, 208, 209, 214, 309, 312, 316, and 409)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 53022, Dec. 3, 1976; 85 FR 63176, Oct. 6, 2020]

§ 1.244 Designation of a settlement officer.

(a) Parties may request that the presiding officer appoint a settlement officer to facilitate the resolution of the case by settlement.

(b) Where all parties in a case agree that such procedures may be beneficial, such requests may be filed with the presiding officer no later than 15 days prior to the date scheduled for the commencement of hearings or, in hearing proceedings conducted pursuant to §§ 1.370 through 1.377, no later than 15 days before the date set as the deadline for filing the affirmative case. The presiding officer shall suspend the procedural dates in the case pending action upon such requests.

(c) If, in the discretion of the presiding officer, it appears that the appointment of a settlement officer will facilitate the settlement of the case, the presiding officer shall appoint a ''neutral'' as defined in 5 U.S.C. 571 and 573 to act as the settlement officer.

(1) The parties may request the appointment of a settlement officer of their own choosing so long as that person is a ''neutral'' as defined in 5 U.S.C. 571 and 573.

(2) The appointment of a settlement officer in a particular case is subject to the approval of all the parties in the proceeding.

(3) Neither the Commission, nor any sitting members of the Commission, nor the presiding officer shall serve as the settlement officer in any case.

(4) Other members of the Commission's staff who qualify as neutrals may be appointed as settlement officers. The presiding officer shall not appoint a member of the Commission's staff as a settlement officer in any case if the staff member's duties include, or have included, drafting, reviewing, and/or recommending actions on the merits of the issues designated for hearing in that case.

(d) The settlement officer shall have the authority to require parties to submit their written direct cases for review. The settlement officer may also meet with the parties and/or their counsel, individually and/or at joint conferences, to discuss their cases and the cases of their competitors. All such meetings will be off-the-record, and the settlement officer may express an opinion as to the relative merit of the parties' positions and recommend possible means to resolve the proceeding by settlement. The proceedings before the settlement officer shall be subject to the confidentiality provisions of 5 U.S.C. 574. Moreover, no statements, offers of settlement, representations or concessions of the parties or opinions expressed by the settlement officer will be admissible as evidence in any Commission proceeding.

[85 FR 63176, Oct. 6, 2020]

§ 1.245 Disqualification of presiding officer.

(a) In the event that a presiding officer (other than the Commission) deems himself or herself disqualified and desires to withdraw from the case, the presiding officer shall immediately so notify the Commission.

(b) Any party may request the presiding officer to withdraw on the grounds of personal bias or other disqualification.

(1) The person seeking disqualification shall file with the presiding officer an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification.

(2) The presiding officer may file a response to the affidavit; and if the presiding officer believes he or she is not disqualified, he or she shall so rule and continue with the hearing proceeding.

(3) The person seeking disqualification may appeal a ruling denying the request for withdrawal of the presiding officer, and, in that event, shall do so within five days of release of the presiding officer's ruling. Unless an appeal of the ruling is filed at this time, the right to request withdrawal of the presiding officer shall be deemed waived.

(4) If an appeal of the ruling is filed, the presiding officer shall certify the question, together with the affidavit and any response filed in connection therewith, to the Commission. The hearing shall be suspended pending a ruling on the question by the Commission.

(5) The Commission may rule on the question without hearing, or it may require testimony or argument on the issues raised.

(6) The affidavit, response, testimony or argument thereon, and the Commission's decision shall be part of the record in the case.

(5 U.S.C. 556; 47 U.S.C. 154, 159, 208, 209, 214, 309, 312, 316, and 409)

[28 FR 12425, Nov. 22, 1963, as amended at 55 FR 36641, Sept. 6, 1990; 62 FR 4171, Jan. 29, 1997; 85 FR 63176, Oct. 6, 2020]

PREHEARING PROCEDURES

§ 1.246 Admission of facts and genuineness of documents.

(a) Within 20 days after the time for filing a notice of appearance has expired; or within 20 days after the release of an order adding parties to the proceeding (see §§1.223 and 1.227) or changing the issues (see §1.229); or within such shorter or longer time as the presiding officer may allow on motion or notice, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents identified in and exhibited by a clear copy with the request or of the truth of any relevant matters of fact set forth in the request.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof, or within such shorter or longer time as the presiding officer may allow on motion or notice, the party to whom the request is directed serves upon the party requesting the admission either: (1) A sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters, or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a

part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

(c) A copy of the request and of any answer shall be served by the party filing on all other parties to the proceeding and upon the presiding officer.

(d) Written objections to the requested admissions may be ruled upon by the presiding officer without additional pleadings.

[33 FR 463, Jan. 12, 1968, as amended at 35 FR 17333, Nov. 11, 1970]

§ 1.248 Status conferences.

(a) The presiding officer may direct the parties or their attorneys to appear at a specified time and place for a status conference during the course of a hearing proceeding, or to submit suggestions in writing, for the purpose of considering, among other things, the matters set forth in paragraph (c) of this section. Any party may request a status conference at any time after release of the order designating a matter for hearing. During a status conference, the presiding officer may issue rulings regarding matters relevant to the conduct of the hearing proceeding including, *inter alia,* procedural matters, discovery, and the submission of briefs or evidentiary materials.

(b) The presiding officer shall schedule an initial status conference promptly after written appearances have been submitted under § 1.91 or § 1.221. At or promptly after the initial status conference, the presiding officer shall adopt a schedule to govern the hearing proceeding. If the Commission designated a matter for hearing on a written record under §§ 1.370 through 1.376, the scheduling order shall include a deadline for filing a motion to request an oral hearing in accordance with § 1.376. If the Commission did not designate the matter for hearing on a written record, the scheduling order shall include a deadline for filing a motion to conduct the hearing on a written record. Except as circumstances otherwise require, the presiding officer shall allow a reasonable period prior to commencement of the hearing for the orderly completion of all prehearing procedures, including discovery, and for the submission and disposition of all motions.

(c) In status conferences, the following matters, among others, may be considered:

(1) Clarifying, amplifying, or narrowing issues designated for hearing;

(2) Scheduling;

(3) Admission of facts and of the genuineness of documents (see § 1.246), and the possibility of stipulating with respect to facts;

(4) Discovery;

(5) Motions;

(6) Hearing procedure;

(7) Settlement (see § 1.93); and

(8) Such other matters that may aid in resolution of the issues designated for hearing.

(d) Status conferences may be conducted in person or by telephone conference call or similar technology, at the discretion of the presiding officer. An official transcript of all status conferences shall be made unless the presiding officer and the parties agree to forego a transcript, in which case any rulings by the presiding officer during the status conference shall be promptly memorialized in writing.

(e) The failure of any attorney or party, following reasonable notice, to appear at a scheduled status conference may be deemed a waiver by that party of its rights to participate in the hearing proceeding and shall not preclude the presiding officer from conferring with parties or counsel present.

[85 FR 63177, Oct. 6, 2020]

§ 1.249 Presiding officer statement.

The presiding officer shall enter upon the record a statement reciting all actions taken at a status conference convened under § 1.248 and incorporating into the record all of the stipulations and agreements of the parties which were approved by the presiding officer, and any special rules which the presiding officer may deem necessary to govern the course of the proceeding.

[85 FR 63177, Oct. 6, 2020]

HEARING AND INTERMEDIATE DECISION

§ 1.250 Discovery and preservation of evidence; cross-reference.

For provisions relating to prehearing discovery and preservation of admissible evidence in hearing proceedings under this subpart B, see §§ 1.311 through 1.325.

[85 FR 63177, Oct. 6, 2020]

§ 1.251 Summary decision.

(a)(1) Any party to an adjudicatory proceeding may move for summary decision of all or any of the issues designated for hearing. The motion shall be filed at least 20 days prior to the date set for commencement of the hearing or, in hearing proceedings conducted pursuant to §§ 1.370 through 1.377, at least 20 days before the date that the presiding officer sets as the deadline for filing the affirmative case. See § 1.372. The party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination in the hearing proceeding.

(2) A party may file a motion for summary decision after the deadlines in paragraph (a)(1) of this section only with the presiding officer's permission, or upon the presiding officer's invitation. No appeal from an order granting or denying a request for permission to file a motion for summary decision shall be allowed. If the presiding officer authorizes a motion for summary decision after the deadlines in paragraph (a)(1) of this section, proposed findings of fact and conclusions of law on those issues which the moving party believes can be resolved shall be attached to the motion, and any other party may file findings of fact and conclusions of law as an attachment to pleadings filed by the party pursuant to paragraph (b) of this section.

(3) Motions for summary decision should be addressed to the Commission in any hearing proceeding in which the Commission is the presiding officer and it has appointed a case manager pursuant to § 1.242. The Commission, in its discretion, may defer ruling on any such motion until after the case manager has certified the record for decision by the Commission pursuant to § 1.377.

(b) Within 14 days after a motion for summary decision is filed, any other party to the proceeding may file an opposition or a countermotion for summary decision. A party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is a genuine issue of material fact for determination at the hearing, that he cannot, for good cause, present by affidavit or otherwise facts essential to justify his opposition, or that summary decision is otherwise inappropriate.

(c) Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The presiding officer may, in his or her discretion, set the matter for argument and may call for the submission of proposed findings, conclusions, briefs or memoranda of law. The presiding officer, giving appropriate weight to the nature of the proceeding, the issue or issues, the proof, and the need for cross-examination, if any, may grant a motion for summary decision to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is otherwise entitled to summary decision. If it appears from the affidavits of a party opposing the motion that the party cannot, for good cause shown, present by affidavit or otherwise facts essential to justify the party's opposition, the presiding officer may deny the motion, may order a continuance to permit affidavits to be obtained or discovery to be had, or make such other order as is just.

(e) If all of the issues (or a dispositive issue) are determined on a motion for summary decision, the hearing proceeding shall be terminated. When a presiding officer (other than the Commission) issues a Summary Decision, it is subject to appeal or review in the same manner as an Initial Decision.

See §§ 1.271 through 1.282. If some of the issues only (including no dispositive issue) are decided on a motion for summary decision, or if the motion is denied, the presiding officer will issue a memorandum opinion and order, interlocutory in character, and the hearing proceeding will continue on the remaining issues. Appeal from interlocutory rulings is governed by § 1.301.

(f) The presiding officer may take any action deemed necessary to assure that summary decision procedures are not abused. The presiding officer may rule in advance of a motion that the proceeding is not appropriate for summary decision, and may take such other measures as are necessary to prevent any unwarranted delay.

(1) Should it appear to the satisfaction of the presiding officer that a motion for summary decision has been presented in bad faith or solely for the purpose of delay, or that such a motion is patently frivolous, the presiding officer will enter a determination to that effect upon the record.

(2) If, on making such determination, the presiding officer concludes that the facts warrant disciplinary action against an attorney, the matter, together with any findings and recommendations, will be referred to the Commission for consideration under § 1.24.

(3) If, on making such determination, the presiding officer concludes that the facts warrant a finding of bad faith on the part of a party to the proceeding, the presiding officer will certify the matter to the Commission, with findings and recommendations, for a determination as to whether the facts warrant the addition of an issue to the hearing proceeding as to the character qualifications of that party.

[37 FR 7507, Apr. 15, 1972, as amended at 42 FR 56508, Oct. 26, 1977; 85 FR 63177, Oct. 6, 2020]

§ 1.253 Time and place of hearing.

The presiding officer shall specify the time and place of oral hearings. All oral hearings will take place at Commission Headquarters unless the presiding officer designates another location.

[85 FR 63178, Oct. 6, 2020]

§ 1.254 Nature of the hearing proceeding; burden of proof.

Any hearing upon an application shall be a full hearing proceeding in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant except as otherwise provided in the order of designation.

(Sec. 309, 48 Stat. 1085, as amended; 47 U.S.C. 309)

[85 FR 63178, Oct. 6, 2020]

§ 1.255 Order of procedure.

(a) At hearings on a formal complaint or petition or in a proceeding for any instrument of authorization which the Commission is empowered to issue, the complainant, petitioner, or applicant, as the case may be, shall, unless the Commission otherwise orders, open and close. At hearings on protests, the protestant opens and closes the proceedings in case the issues are not specifically adopted by the Commission; otherwise the grantee does so. At hearings on orders to show cause, to cease and desist, to revoke or modify a station license under sections 312 and 316 of the Communications Act, or other like proceedings instituted by the Commission, the Commission shall open and close.

(b) At all hearings under Title II of the Communications Act, other than hearings on formal complaints, petitions, or applications, the respondent shall open and close unless otherwise specified by the Commission.

(c) In all other cases, the Commission or presiding officer shall designate the order of presentation. Intervenors shall follow the party in whose behalf intervention is made, and in all cases where the intervention is not in support of an original party, the Commission or presiding officer shall designate at what stage such intervenors shall be heard.

[28 FR 12425, Nov. 22, 1963, as amended at 33 FR 463, Jan. 12, 1968]

§ 1.258–1.260 [Reserved]

§ 1.261 Corrections to transcript.

At any time during the course of the proceeding, or as directed by the presiding officer, but not later than 10 days after the transmission to the parties of the transcript of any oral conference or hearing, any party to the proceeding may file with the presiding officer a motion requesting corrections to the transcript, which motion shall be accompanied by proof of service thereof upon all other parties to the proceeding. Within 5 days after the filing of such a motion, other parties may file a pleading in support of or in opposition to such motion. Thereafter, the presiding officer shall, by order, specify the corrections to be made in the transcript, and a copy of the order shall be served upon all parties and made a part of the record. The presiding officer may *sua sponte* specify corrections to be made in the transcript on 5 days' notice.

[85 FR 63178, Oct. 6, 2020]

§ 1.263 Proposed findings and conclusions.

(a) The presiding officer may direct any party to file proposed findings of fact and conclusions, briefs, or memoranda of law. If the presiding officer does not so order, any party to the proceeding may seek leave to file proposed findings of fact and conclusions, briefs, or memoranda of law. Such proposed findings of fact, conclusions, briefs, and memoranda of law shall be filed within the time prescribed by the presiding officer.

(b) All pleadings and other papers filed pursuant to this section shall be accompanied by proof of service thereof upon all other counsel in the proceeding; if a party is not represented by counsel, proof of service upon such party shall be made.

(c) In the absence of a showing of good cause therefor, the failure to file proposed findings of fact, conclusions, briefs, or memoranda of law, when directed to do so, may be deemed a waiver of the right to participate further in the proceeding.

(5 U.S.C. 557; 47 U.S.C. 154, 159, 208, 209, 214, 309, 312, 316, and 409)

[28 FR 12425, Nov. 22, 1963, as amended at 85 FR 63178, Oct. 6, 2020]

§ 1.264 Contents of findings of fact and conclusions.

Proposed findings of fact shall be set forth in serially numbered paragraphs and shall set out in detail and with particularity all basic evidentiary facts developed on the record (with appropriate citations to the transcript of record or exhibit relied on for each evidentiary fact) supporting the conclusions proposed by the party filing same. Proposed conclusions shall be separately stated. Proposed findings of fact and conclusions submitted by a person other than an applicant may be limited to those issues in connection with the hearing which affect the interests of such person.

(5 U.S.C. 557)

§ 1.265 Closing the record.

At the conclusion of hearing proceedings, the presiding officer shall promptly close the record after the parties have submitted their evidence, filed any proposed findings and conclusions under § 1.263, and submitted any other information required by the presiding officer. After the record is closed, it shall be certified by the presiding officer and filed in the Office of the Secretary. Notice of such certification shall be served on all parties to the proceedings.

[85 FR 63178, Oct. 6, 2020]

§ 1.267 Initial and recommended decisions.

(a) Except as provided in §§ 1.94, 1.251, and 1.274, when the proceeding is terminated on motion, or when the presiding officer is the Commission, the presiding officer shall prepare an initial (or recommended) decision, which shall be transmitted to the Secretary of the Commission. In the case of rate making proceedings conducted under sections 201–205 of the Communications Act, the presumption shall be that the

presiding officer shall prepare an initial or recommended decision. The Secretary will make the decision public immediately and file it in the docket of the case.

(b) Each initial and recommended decision shall contain findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; each initial decision shall also contain the appropriate rule or order, and the sanction, relief or denial thereof; and each recommended decision shall contain recommendations as to what disposition of the case should be made by the Commission. Each initial decision will show the date upon which it will become effective in accordance with the rules in this part in the absence of exceptions, appeal, or review.

(c) When the Commission is not the presiding officer, the authority of the presiding officer over the proceedings shall cease when the presiding officer has filed an Initial or Recommended Decision, or if it is a case in which the presiding officer is to file no decision, when they have certified the case for decision: *Provided*, however, That the presiding officer shall retain limited jurisdiction over the proceeding for the purpose of effecting certification of the record and corrections to the transcript, as provided in §§ 1.265 and 1.261, respectively, and for the purpose of ruling initially on applications for awards of fees and expenses under the Equal Access to Justice Act.

(Sec. 409, 48 Stat. 1096, as amended; 47 U.S.C. 409, 5 U.S.C. 557; secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083: 47 U.S.C. 154, 303, 307)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976; 47 FR 3786, Jan. 27, 1982; 85 FR 63178, Oct. 6, 2020]

REVIEW PROCEEDINGS

§ 1.271 Delegation of review function.

The Commission may direct, by order or rule, that its review function in a case or category of cases be performed by a commissioner, or a panel of commissioners, in which event the commissioner or panel shall exercise the authority and perform the functions which would otherwise have been performed by the Commission under §§ 1.273 through 1.282.

NOTE: To provide for an orderly completion of cases, exceptions and related pleadings filed after March 1, 1996, shall be directed to the Commission and will not be acted upon by the Review Board.

[62 FR 4171, Jan. 29, 1997]

§ 1.273 Waiver of initial or recommended decision.

When the Commission serves as the presiding officer, it will not issue an initial or recommended decision. When the Commission is not the presiding officer, at any time before the record is closed all parties to the proceeding may agree to waive an initial or recommended decision, and may request that the Commission issue a final decision or order in the case. If the Commission has directed that its review function in the case be performed by a commissioner or a panel of commissioners, the request shall be directed to the appropriate review authority. The Commission or such review authority may in its discretion grant the request, in whole or in part, if such action will best conduce to the proper dispatch of business and to the ends of justice.

[85 FR 63178, Oct. 6, 2020]

§ 1.274 Certification of the record to the Commission for decision when the Commission is not the presiding officer; presiding officer unavailability.

(a) When the Commission is not the presiding officer, and where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires, the Commission may direct that the record in a pending proceeding be certified to it for decision.

(b) When a presiding officer becomes unavailable to the Commission after the taking of evidence has been concluded, the Commission shall direct that the record be certified to it for decision. In that event, the Commission shall designate a new presiding officer in accordance with § 1.241 for the limited purpose of certifying the record to the Commission.

(c) In all other circumstances when the Commission is not the presiding officer, the presiding officer shall prepare

and file an initial or recommended decision, which will be released in accordance with § 1.267.

(d) When a presiding officer becomes unavailable to the Commission after the taking of evidence has commenced but before it has been concluded, the Commission shall designate another presiding officer in accordance with § 1.241 to continue the hearing proceeding. Oral testimony already introduced shall not be reheard unless observation of the demeanor of the witness is essential to the resolution of the case.

(Sec. 409, 48 Stat. 1096, as amended; 47 U.S.C. 409)

[85 FR 63179, Oct. 6, 2020]

§ 1.276 Appeal and review of initial decision.

(a)(1) Within 30 days after the date on which public release of the full text of an initial decision is made, or such other time as the Commission may specify, any of the parties may appeal to the Commission by filing exceptions to the initial decision, and such decision shall not become effective and shall then be reviewed by the Commission, whether or not such exceptions may thereafter be withdrawn. It is the Commission's policy that extensions of time for filing exceptions shall not be routinely granted.

(2) Exceptions shall be consolidated with the argument in a supporting brief and shall not be submitted separately. As used in this subpart, the term *exceptions* means the document consolidating the exceptions and supporting brief. The brief shall contain (i) a table of contents, (ii) a table of citations, (iii) a concise statement of the case, (iv) a statement of the questions of law presented, and (v) the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific reference to the record and all legal or other materials relied on.

(b) The Commission may on its own initiative provide, by order adopted not later than 20 days after the time for filing exceptions expires, that an initial decision shall not become final, and that it shall be further reviewed or considered by the Commission.

(c) In any case in which an initial decision is subject to review in accordance with paragraph (a) or (b) of this section, the Commission may, on its own initiative or upon appropriate requests by a party, take any one or more of the following actions:

(1) Hear oral argument on the exceptions;

(2) Require the filing of briefs;

(3) Prior to or after oral argument or the filing of exceptions or briefs, reopen the record and/or remand the proceedings to the presiding officer to take further testimony or evidence;

(4) Prior to or after oral argument or the filing of exceptions or briefs, remand the proceedings to the presiding officer to make further findings or conclusions; and

(5) Prior to or after oral argument or the filing of exceptions or briefs, issue, or cause to be issued by the presiding officer, a supplemental initial decision.

(d) No initial decision shall become effective before 50 days after public release of the full text thereof is made unless otherwise ordered by the Commission. The timely filing of exceptions, the further review or consideration of an initial decision on the Commission's initiative, or the taking of action by the Commission under paragraph (c) of this section shall stay the effectiveness of the initial decision until the Commission's review thereof has been completed. If the effective date of an initial decision falls within any further time allowed for the filing of exceptions, it shall be postponed automatically until 30 days after time for filing exceptions has expired.

(e) If no exceptions are filed, and the Commission has not ordered the review of an initial decision on its initiative, or has not taken action under paragraph (c) of this section, the initial decision shall become effective, an appropriate notation to that effect shall be entered in the docket of the case, and a ''Public Notice'' thereof shall be given by the Commission. The provisions of § 1.108 shall not apply to such public notices.

(f) When any party fails to file exceptions within the specified time to an initial decision which proposes to deny its application, such party shall be deemed to have no interest in further

prosecution of its application, and its application may be dismissed with prejudice for failure to prosecute.

(Sec. 40, 48 Stat. 1096, as amended; 47 U.S.C. 409)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976]

§ 1.277 Exceptions; oral arguments.

(a) The consolidated supporting brief and exceptions to the initial decision (see § 1.276(a)(2)), including rulings upon motions or objections, shall point out with particularity alleged material errors in the decision or ruling and shall contain specific references to the page or pages of the transcript of hearing, exhibit or order if any on which the exception is based. Any objection not saved by exception filed pursuant to this section is waived.

(b) Within the period of time allowed in § 1.276(a) for the filing of exceptions, any party may file a brief in support of an initial decision, in whole or in part, which may contain exceptions and which shall be similar in form to the brief in support of exceptions (see § 1.276(a)(2)).

(c) Except by special permission, the consolidated brief and exceptions will not be accepted if the exceptions and argument exceed 25 double-spaced typewritten pages in length. (The table of contents and table of citations are not counted in the 25 page limit; however, all other contents of and attachments to the brief are counted.) Within 10 days, or such other time as the Commission or delegated authority may specify, after the time for filing exceptions has expired, any other party may file a reply brief, which shall not exceed 25 double spaced typewritten pages and shall contain a table of contents and a table of citations. If exceptions have been filed, any party may request oral argument not later than five days after the time for filing replies to the exceptions has expired. The Commission or delegated authority, in its discretion, will grant oral argument by order only in cases where such oral presentations will assist in the resolution of the issues presented. Within five days after release of an order designating an initial decision for oral argument, as provided in paragraph (d) of this section, any party who wishes to participate in oral argument shall file a written notice of intention to appear and participate in oral argument. Failure to file a written notice shall constitute a waiver of the opportunity to participate.

(d) Each order scheduling a case for oral argument will contain the allotment of time for each party for oral argument before the Commission. The Commission will grant, in its discretion, upon good cause shown, an extension of such time upon petition by a party, which petition must be filed within 5 days after issuance of said order for oral argument.

(e) Within 10 days after a transcript of oral argument has been filed in the Office of the Secretary, any party who participated in the oral argument may file with the Commission a motion requesting correction of the transcript, which motion shall be accompanied by proof of service thereof upon all other parties who participated in the oral argument. Within 5 days after the filing of such a motion, other parties may file a pleading in support of or in opposition to such motion. Thereafter, the officer who presided at the oral argument shall, by order, specify the corrections to be made in the transcript, and a copy of the order shall be served upon all parties to the proceeding. The officer who presided at the oral argument may, on his own initiative, by order, specify corrections to be made in the transcript on 5 days notice of the proposed corrections to all parties who participated in the oral argument.

(f) Any commissioner who is not present at oral argument and who is otherwise authorized to participate in a final decision may participate in making that decision after reading the transcript of oral argument.

(Sec. 409, 48 Stat. 1096, as amended; 47 U.S.C. 409)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976; 41 FR 34259, Aug. 13, 1976; 44 FR 12426, Mar. 7, 1979; 56 FR 793, Jan. 9, 1991; 62 FR 4171, Jan. 29, 1997; 71 FR 15618, Mar. 29, 2006]

§ 1.279 Limitation of matters to be reviewed.

(a) Upon review of any initial decision, the Commission may, in its discretion, limit the issues to be reviewed

to those findings and conclusions to which exceptions have been filed, or to those findings and conclusions specified in the Commission's order of review issued pursuant to § 1.276(b).

(b) No party may file an exception to the presiding officer's ruling that all or part of the hearing be conducted and resolved on a written record, unless that party previously filed an interlocutory motion to request an oral hearing in accordance with § 1.376.

[85 FR 63179, Oct. 6, 2020]

§ 1.282 Final decision of the Commission.

(a) After opportunity has been afforded for the filing of proposed findings of fact and conclusions, exceptions, supporting statements, briefs, and for the holding of oral argument as provided in this subpart, the Commission will issue a final decision in each case in which an initial decision has not become final.

(b) The final decision shall contain:

(1) Findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record;

(2) Rulings on each relevant and material exception filed; the Commission will deny irrelevant exceptions, or those which are not of decisional significance, without a specific statement of reasons prescribed by paragraph (b)(1) of this section; and

(3) The appropriate rule or order and the sanction, relief or denial thereof.

(Sec. 8(b), 60 Stat. 2422; 5 U.S.C. 1007(b))

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976; 76 FR 70908, Nov. 16, 2011]

INTERLOCUTORY ACTIONS IN HEARING PROCEEDINGS

§ 1.291 General provisions.

(a)(1) The Commission acts on petitions to amend, modify, enlarge or delete the issues in hearing proceedings which involve rule making matters exclusively.

(2) All other interlocutory matters in hearing proceedings are acted on by the presiding officer.

(3) Each interlocutory pleading shall identify the presiding officer in its caption. Unless the pleading is to be acted upon by the Commission, the presiding officer shall be identified by name.

(b) All interlocutory pleadings shall be submitted in accordance with the provisions of §§ 1.4, 1.44, 1.47, 1.48, 1.49, 1.50, 1.51, and 1.52.

(c)(1) Procedural rules governing interlocutory pleadings are set forth in §§ 1.294 through 1.298.

(2) Rules governing appeal from, and reconsideration of, interlocutory rulings made by the presiding officer are set forth in § 1.301.

(3) Petitions requesting reconsideration of an interlocutory ruling will not be entertained.

(d) No initial decision shall become effective under § 1.276(e) until all interlocutory matters pending before the Commission in the proceeding at the time the initial decision is issued have been disposed of and the time allowed for appeal from interlocutory rulings of the presiding officer has expired.

(Secs. 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended; 47 CFR 0.61 and 0.283)

[85 FR 63179, Oct. 6, 2020]

§ 1.294 Oppositions and replies.

(a) Any party to a hearing proceeding may file an opposition to an interlocutory request filed in that proceeding.

(b) Except as provided in paragraph (c) of this section or as otherwise ordered by the presiding officer, oppositions to interlocutory requests shall be filed within 4 days after the original pleading is filed, and replies to oppositions will not be entertained.

(c) Additional pleadings may be filed only if specifically requested or authorized by the person(s) who is to make the ruling.

[85 FR 63179, Oct. 6, 2020]

§ 1.296 Service.

No pleading filed pursuant to § 1.51 or § 1.294 will be considered unless it is accompanied by proof of service upon the parties to the proceeding.

(Secs. 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended; 47 CFR 0.61 and 0.283)

[49 FR 4381, Feb. 6, 1984, as amended at 62 FR 4171, Jan. 29, 1997]

§ 1.297 Oral argument.

Oral argument with respect to any contested interlocutory matter will be held when, in the opinion of the person(s) who is to make the ruling, the ends of justice will be best served thereby. Timely notice will be given of the date, time, and place of any such oral argument.

[29 FR 6444, May 16, 1964]

§ 1.298 Rulings; time for action.

(a) Unless it is found that irreparable injury would thereby be caused one of the parties, or that the public interest requires otherwise, or unless all parties have consented to the contrary, consideration of interlocutory requests will be withheld until the time for filing oppositions (and replies, if replies are allowed) has expired. As a matter of discretion, however, requests for continuances and extensions of time, requests for permission to file pleadings in excess of the length prescribed in this chapter, and requests for temporary relief may be ruled upon *ex parte* without waiting for the filing of responsive pleadings.

(b) In the discretion of the presiding officer, rulings on interlocutory matters may be made orally to the parties. The presiding officer may, in his or her discretion, state reasons therefor on the record if the ruling is being transcribed, or may promptly issue a written statement of the reasons for the ruling, either separately or as part of an initial decision.

[28 FR 12425, Nov. 22, 1963, as amended at 29 FR 6444, May 16, 1964; 41 FR 14874, Apr. 8, 1976; 85 FR 63179, Oct. 6, 2020]

Appeal and Reconsideration of Presiding Officer's Ruling

§ 1.301 Appeal from interlocutory rulings by a presiding officer, other than the Commission, or a case manager; effective date of ruling.

(a) *Interlocutory rulings which are appealable as a matter of right.* Rulings listed in this paragraph are appealable as a matter of right. An appeal from such a ruling may not be deferred and raised as an exception to the initial decision.

(1) If a ruling denies or terminates the right of any person to participate as a party to a hearing proceeding, such person, as a matter of right, may file an appeal from that ruling.

(2) If a ruling requires testimony or the production of documents, over objection based on a claim of privilege, the ruling on the claim of privilege is appealable as a matter of right.

(3) If a ruling denies a motion to disqualify the presiding officer or case manager, the ruling is appealable as a matter of right.

(4) A ruling removing counsel from the hearing is appealable as a matter of right, by counsel on his own behalf or by his client. (In the event of such ruling, the presiding officer will adjourn the hearing proceeding for such period as is reasonably necessary for the client to secure new counsel and for counsel to become familiar with the case).

(b) *Other interlocutory rulings.* Except as provided in paragraph (a) of this section, appeals from interlocutory rulings shall be filed only if allowed by the presiding officer. Any party desiring to file an appeal shall first file a request for permission to file appeal. The request shall be filed within 5 days after the order is released or (if no written order) after the ruling is made. Pleadings responsive to the request shall be filed only if they are requested by the presiding officer. If the presiding officer made the ruling, the request shall contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception. If a case manager made the ruling, the request shall contain a showing that the appeal presents a question of law or policy that the case manager lacks authority to resolve. The presiding officer shall determine whether the showing is such as to justify an interlocutory appeal and, in accordance with his determination, will either allow or disallow the appeal or modify the ruling. Such ruling is final: *Provided, however,* That the Commission may, on its own motion, dismiss an appeal allowed under this section on the ground that objection to the ruling should be deferred and raised after the record is certified

for decision by the Commission or as an exception to an initial decision.

(1) If an appeal is not allowed, or is dismissed by the Commission, or if permission to file an appeal is not requested, objection to the ruling may be raised after the record is certified for decision by the Commission or on review of the initial decision.

(2) If an appeal is allowed and is considered on its merits, the disposition on appeal is final. Objection to the ruling or to the action on appeal may not be raised after the record is certified for decision by the Commission or on review of the initial decision.

(3) If the presiding officer modifies their initial ruling, any party adversely affected by the modified ruling may file a request for permission to file appeal, pursuant to the provisions of this paragraph.

(c) *Procedures, effective date.* (1) Unless the presiding officer orders otherwise, rulings made shall be effective when the order is released or (if no written order) when the ruling is made. The Commission may stay the effect of any ruling that comes before it for consideration on appeal.

(2) Appeals filed under paragraph (a) of this section shall be filed within 5 days after the order is released or (if no written order) after the ruling is made. Appeals filed under paragraph (b) of this section shall be filed within 5 days after the appeal is allowed.

(3) The appeal shall conform with the specifications set out in § 1.49 and shall be subscribed and verified as provided in § 1.52.

(4) The appeal shall be served on parties to the proceeding (see §§ 1.47 and 1.211), and shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

(5) The appeal shall not exceed 5 double-spaced typewritten pages.

(6) Appeals are acted on by the Commission.

(7) Oppositions and replies shall be served and filed in the same manner as appeals and shall be served on appellant if he is not a party to the proceeding. Oppositions shall be filed within 5 days after the appeal is filed. Replies shall not be permitted, unless the Commission specifically requests them. Oppositions shall not exceed 5 double-spaced typewritten pages. Replies shall not exceed 5 double-spaced typewritten pages.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[35 FR 17333, Nov. 11, 1970, as amended at 40 FR 39509, Aug. 28, 1975; 41 FR 14874, Apr. 8, 1976; 41 FR 28789, July 13, 1976; 46 FR 58682, Dec. 3, 1981; 55 FR 36641, Sept. 6, 1990; 62 FR 4171, Jan. 29, 1997; 85 FR 63179, Oct. 6, 2020]

§ 1.302 Appeal from final ruling by presiding officer other than the Commission; effective date of ruling.

(a) If the presiding officer's ruling terminates a hearing proceeding, any party to the proceeding, as a matter of right, may file an appeal from that ruling within 30 days after the ruling is released.

(b) Any party who desires to preserve the right to appeal shall file a notice of appeal within 10 days after the ruling is released. If a notice of appeal is not filed within 10 days, the ruling shall be effective 30 days after the ruling is released and within this period, may be reviewed by the Commission on its own motion. If an appeal is not filed following notice of appeal, the ruling shall be effective 50 days after the day of its release and, within this period, may be reviewed by the Commission on its own motion. If an appeal is filed, or if the Commission reviews the ruling on its own motion, the effect of the ruling is further stayed pending the completion of proceedings on appeal or review.

(c) The appeal shall conform with the specifications set out in § 1.49 and shall be subscribed and verified as provided in § 1.52.

(d) The appeal shall be served on parties to the proceeding (see §§ 1.47 and 1.211), and shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

(e) The appeal shall not exceed 25 double-spaced typewritten pages.

(f) The Commission will act on the appeal.

(g) Oppositions and replies shall be filed and served in the same manner as the appeal. Oppositions to an appeal shall be filed within 15 days after the appeal is filed. Replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited

to matters raised in the oppositions. Oppositions shall not exceed 25 double-spaced typewritten pages. Replies shall not exceed 10 double-spaced typewritten pages.

[35 FR 17333, Nov. 11, 1970, as amended at 36 FR 7423, Apr. 20, 1971; 62 FR 4171, Jan. 29, 1997; 85 FR 63180, Oct. 6, 2020]

THE DISCOVERY AND PRESERVATION OF EVIDENCE

AUTHORITY: Sections 1.311 through 1.325 are issued under secs. 4, 303, 409, 48 Stat., as amended, 1066, 1082, 1096; 47 U.S.C. 154, 303, 409, 5 U.S.C. 552.

§ 1.311 General.

Sections 1.311 through 1.325 provide for taking the deposition of any person (including a party), for interrogatories to parties, and for orders to parties relating to the production of documents and things and for entry upon real property. These procedures may be used for the discovery of relevant facts, for the production and preservation of evidence for use in a hearing proceeding, or for both purposes.

(a) *Applicability*. For purposes of discovery, these procedures may be used in any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for hearing. For the preservation of evidence, they may be used in any case which has been designated for hearing and is conducted under the provisions of this subpart (see § 1.201).

(b) *Scope of examination*. Persons and parties may be examined regarding any matter, not privileged, which is relevant to the hearing issues, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection to use of these procedures that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence. The use of these procedures against the Commission is subject to the following additional limitations:

(1) The informer's privilege shall encompass information which may lead to the disclosure of an informer's identity.

(2) Commission personnel may not be questioned by deposition for the purposes of discovery except on special order of the Commission, but may be questioned by written interrogatories under § 1.323. Interrogatories shall be served on the appropriate Bureau Chief (see § 1.21(b)). They will be answered and signed by those personnel with knowledge of the facts. The answers will be served by the Secretary of the Commission upon parties to the proceeding.

(3) Commission records are not subject to discovery under § 1.325. The inspection of Commission records is governed by the Freedom of Information Act, as amended, and by §§ 0.451 through 0.467 of this chapter. Commission employees may be questioned by written interrogatories regarding the existence, nature, description, custody, condition and location of Commission records, but may not be questioned concerning their contents unless the records are available (or are made available) for inspection under §§ 0.451 through 0.467. See § 0.451(b)(5) of this chapter.

(4) Subject to paragraphs (b) (1) through (3) of this section, Commission personnel may be questioned generally by written interrogatories regarding the existence, description, nature, custody, condition and location of relevant documents and things and regarding the identity and location of persons having knowledge of relevant facts, and may otherwise only be examined regarding facts of the case as to which they have direct personal knowledge.

(c) *Schedule for use of the procedures*. (1) Except as provided by special order of the presiding officer, discovery may be initiated after the initial conference provided for in § 1.248(b) of this part.

(2) In all proceedings, the presiding officer may at any time order the parties or their attorneys to appear at a conference to consider the proper use of these procedures, the time to be allowed for such use, and/or to hear argument and render a ruling on disputes that arise under these rules.

(d) *Stipulations regarding the taking of depositions.* If all of the parties so stipulate in writing and if there is no interference to the conduct of the proceeding, depositions may be taken before any person, at any time (subject to the limitation below) or place, upon any notice and in any manner, and when so taken may be used like other depositions. A copy of the stipulation shall be filed using the Commission's Electronic Comment Filing System, and a copy of the stipulation shall be served on the presiding officer or case manager at least 3 days before the scheduled taking of the deposition.

[33 FR 463, Jan. 12, 1968, as amended at 40 FR 39509, Aug. 28, 1975; 47 FR 51873, Nov. 18, 1982; 56 FR 794, Jan. 9, 1991; 62 FR 4171, Jan. 29, 1997; 85 FR 63180, Oct. 6, 2020]

§ 1.313 Protective orders.

The use of the procedures set forth in §§ 1.311 through 1.325 of this part is subject to control by the presiding officer, who may issue any order consistent with the provisions of those sections which is appropriate and just for the purpose of protecting parties and deponents or of providing for the proper conduct of the proceeding. Whenever doing so would be conducive to the efficient and expeditious conduct of the proceeding, the presiding officer may convene a conference to hear argument and issue a ruling on any disputes that may arise under these rules. The ruling, whether written or delivered on the record at a conference, may specify any measures, including the following to assure proper conduct of the proceeding or to protect any party or deponent from annoyance, expense, embarrassment or oppression:

(a) That depositions shall not be taken or that interrogatories shall not be answered.

(b) That certain matters shall not be inquired into.

(c) That the scope of the examination or interrogatories shall be limited to certain matters.

(d) That depositions may be taken only at some designated time or place, or before an officer, other than that stated in the notice.

(e) That depositions may be taken only by written interrogatories or only upon oral examination.

(f) That, after being sealed, the deposition shall be opened only by order of the presiding officer.

[33 FR 463, Jan. 12, 1968, as amended at 56 FR 794, Jan. 9, 1991]

§ 1.314 Confidentiality of information produced or exchanged.

(a) Any information produced in the course of a hearing proceeding may be designated as confidential by any parties to the proceeding, or third parties, pursuant to § 0.457, § 0.459, or § 0.461 of these rules. Any parties or third-parties asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a confidential designation is claimed. The parties or third parties claiming confidentiality should restrict their designations to encompass only the specific information that they assert is confidential. If a confidential designation is challenged, the party or third party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the materials designated as confidential fall under the standards for nondisclosure enunciated in the FOIA and that the designation is narrowly tailored to encompass only confidential information.

(2) File with the Commission, using the Commission's Electronic Comment Filing System, a public version of the materials that redacts any confidential information and clearly marks each page of the redacted public version with a header stating ''Public Version.'' The Public Version shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the Public Version before filing it electronically.

(3) File an unredacted version of the materials containing confidential information, as directed by the Commission. Each page of the unredacted version shall display a header stating ''Confidential Version.'' The unredacted version must be filed on the same day as the Public Version.

(4) Serve one copy of the Public Version and one copy of the Confidential Version on the attorney of record for each party to the proceeding or on a party if not represented by an attorney, either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of §1.47(g). A copy of the Public Version and Confidential Version shall also be served on the presiding officer, as directed by the Commission.

(b) An attorney of record for any party or any party that receives unredacted materials marked as confidential may disclose such materials solely to the following persons, only for use in prosecuting or defending a party to the hearing proceeding, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Employees of counsel of record representing the parties in the hearing proceeding;

(2) Officers or employees of the receiving party who are directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties; and

(4) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) The individuals identified above in paragraph (b) shall not disclose information designated as confidential to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the hearing proceeding. Each such individual who is provided access to the information shall sign a declaration or affidavit stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(d) Parties may make copies of materials marked confidential solely for use by the Commission or persons designated in paragraph (b) of this section. Each party shall maintain a log recording the number of copies made of all confidential material and the persons to whom the copies have been provided.

(e) The presiding officer may adopt a protective order as appropriate.

(f) Upon final termination of a hearing proceeding, including all appeals and applications for review, the parties shall ensure that all originals and reproductions of any confidential materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the confidential materials of an opposing or third party shall be destroyed.

[85 FR 63180, Oct. 6, 2020]

§1.315 Depositions upon oral examination—notice and preliminary procedure.

(a) *Notice.* A party to a hearing proceeding desiring to take the deposition of any person upon oral examination shall give a minimum of 21 days' notice to every other party, to the person to be examined, and to the presiding officer or case manager. A copy of the notice shall be filed with the Secretary of the Commission for inclusion in the Commission's Electronic Comment Filing System. Related pleadings shall be served and filed in the same manner. The notice shall contain the following information:

(1) The name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The time and place for taking the deposition of each person to be examined, and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(3) The matters upon which each person will be examined. See §1.319.

(b) *Responsive pleadings.* (1) Within 7 days after service of the notice to take depositions, a motion opposing the taking of depositions may be filed by any party to the proceeding or by the person to be examined. See §1.319(a).

(2) Within 14 days after service of the notice to take depositions, a response to the opposition motion may be filed by any party to the proceeding.

(3) Additional pleadings should not be filed and will not be considered.

(4) The computation of time provisions set forth in § 1.4(g) shall not apply to pleadings filed under the provisions of this paragraph.

(c) *Protective order*. On an opposition motion filed under paragraph (b) of this section, or on his own motion, the presiding officer may issue a protective order. See § 1.313. A protective order issued by the presiding officer on his own motion may be issued at any time prior to the date specified in the notice for the taking of depositions.

(d) *Authority to take depositions*. (1) If an opposition motion is not filed within 7 days after service of the notice to take depositions, and if the presiding officer does not on his own motion issue a protective order prior to the time specified in the notice for the taking of depositions, the depositions described in the notice may be taken. An order for the taking of depositions is not required.

(2) If an opposition motion is filed, the depositions described in the notice shall not be taken until the presiding officer has acted on that motion. If the presiding officer authorizes the taking of depositions, he may specify a time, place or officer for taking them different from that specified in the notice to take depositions.

(3) If the presiding officer issues a protective order, the depositions described in the notice may be taken (if at all) only in accordance with the provisions of that order.

[33 FR 10571, July 25, 1968, as amended at 56 FR 794, Jan. 9, 1991; 85 FR 63181, Oct. 6, 2020]

§ 1.316 [Reserved]

§ 1.318 The taking of depositions.

(a) *Persons before whom depositions may be taken*. Depositions shall be taken before any judge of any court of the United States; any U.S. Commissioner; any clerk of a district court; any chancellor, justice or judge of a supreme or superior court; the mayor or chief magistrate of a city; any judge of a county court, or court of common pleas of any of the United States; any notary public, not being of counsel or attorney to any party, nor interested in the event of the proceeding; or presiding officers, as provided in § 1.243.

(b) *Attendance of witnesses*. The attendance of witnesses at the taking of depositions may be compelled by the use of subpena as provided in §§ 1.331 through 1.340.

(c) *Oath; transcript*. The officer before whom the deposition is to be taken shall administer an oath or affirmation to the witness and shall personally, or by someone acting under his direction and in his presence record the testimony of the witness. The testimony may be taken stenographically or, upon approval by the presiding officer, testimony may be taken through the use of telephonically or electronically recorded methods, including videotape. In the event these latter methods are used for the deposition, the parties may agree to the waiver of the provisions of paragraphs (e) and (f) as appropriate and as approved by the presiding officer.

(d) *Examination*. (1) In the taking of depositions upon oral examination, the parties may proceed with examination and cross-examination of deponents as permitted at the hearing. In lieu of participating in the oral examination, parties served with the notice to take depositions may transmit written interrogatories to the officer designated in the notice, who shall propound them to the witness and record the answers verbatim.

(2) In the taking of depositions upon written interrogatories, the party who served the original interrogatories shall transmit copies of all interrogatories to the officer designated in the notice, who shall propound them to the witness and record the answers verbatim.

(e) *Submission of deposition to witness; changes; signing*. When the testimony is fully transcribed, the deposition of each witness shall be submitted to him for examination and shall be read to or by him, unless such examination and reading are waiver by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless

the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver, the illness or absence of the witness, or of his refusal to sign, together with the reason (if any) given therefor; and the deposition may then be used as fully as though signed, unless upon a motion to suppress, the presiding officer holds that the reason given for the refusal to sign requires rejection of the deposition in whole or in part.

(f) *Certification of deposition and filing by officer; copies.* The officer shall certify on the deposition that the witness was duly sworn by him, that the deposition is a true record of the testimony given by the witness, and that said officer is not of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked ''Deposition of (here insert name of witness)'' and shall promptly send the original and two copies of the deposition and of all exhibits, together with the notice and any interrogatories received by him, by certified mail to the Secretary of the Commission.

[33 FR 463, Jan. 12, 1968, as amended at 47 FR 51873, Nov. 18, 1982]

§ 1.319 Objections to the taking of depositions.

(a) *Objections to be made by motion prior to the taking of depositions.* If there is objection to the substance of any interrogatory or to examination on any matter clearly covered by the notice to take depositions, the objection shall be made in a motion opposing the taking of depositions or in a motion to limit or suppress the interrogatory as provided in §§ 1.315(b) and 1.316(d) and shall not be made at the taking of the deposition.

(b) *Objections to be made at the taking of depositions.* Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition. If such objection is made, counsel shall, if possible, agree upon the measures required to obviate, remove, or cure such errors. The measures agreed upon shall be taken. If agreement cannot be reached, the objection shall be noted on the deposition by the officer taking it, and the testimony objected to shall be taken subject to the objection.

(c) *Additional objections which may be made at the taking of depositions.* Objection may be made at the taking of depositions on the ground of relevancy or privilege, if the notice to take depositions does not clearly indicate that the witness is to be examined on the matters to which the objection relates. See paragraph (a) of this section. Objection may also be made on the ground that the examination is being conducted in such manner as to unreasonably annoy, embarrass, or oppress a deponent or party.

(1) When there is objection to a line of questioning, as permitted by this paragraph, counsel shall, if possible, reach agreement among themselves regarding the proper limits of the examination.

(2) If counsel cannot agree on the proper limits of the examination the taking of depositions shall continue on matters not objected to and counsel shall, within 24 hours, either jointly or individually, provide statements of their positions to the presiding officer, together with the telephone numbers at which they and the officer taking the depositions can be reached, or shall otherwise jointly confer with the presiding officer. If individual statements are submitted, copies shall be provided to all counsel participating in the taking of depositions.

(3) The presiding officer shall promptly rule upon the question presented or take such other action as may be appropriate under § 1.313, and shall give notice of his ruling, expeditiously, to counsel who submitted statements and to the officer taking the depositions. The presiding officer shall thereafter reduce his ruling to writing. The presiding officer shall thereafter reduce his ruling to writing.

(4) The taking of depositions shall continue in accordance with the presiding officer's ruling. Such rulings are not subject to appeal.

[33 FR 463, Jan. 12, 1968, as amended at 85 FR 63181, Oct. 6, 2020]

§ 1.321 Use of depositions in hearing proceedings.

(a) No inference concerning the admissibility of a deposition in evidence shall be drawn because of favorable action on the notice to take depositions.

(b) Except as provided in this paragraph and in §1.319, objection may be made to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness, or the competency, relevancy or materiality of testimony are waived by failure to make them before or during the taking of depositions if (and only if) the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Objection on the ground of privilege is waived by failure to make it before or during the taking of depositions.

(c) A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in paragraph (d)(2) of this section. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) At the hearing (or in a pleading), any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of any witness, whether or not a party, may be used by any party for any lawful purpose.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

(5) Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any hearing has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

[33 FR 463, Jan. 12, 1968, as amended at 41 FR 14874, Apr. 8, 1976; 85 FR 63181, Oct. 6, 2020]

§ 1.323 Interrogatories to parties.

(a) *Interrogatories.* Any party may serve upon any other party written interrogatories to be answered in writing by the party served or, if the party served is a public or private corporation, partnership, association, or similar entity, by any officer or agent, who shall furnish such information as is available to the party. Copies of the interrogatories, answers, and all related pleadings shall be filed with the Commission and served on the presiding officer and all other parties to the hearing proceeding.

(1) Except as otherwise provided in a protective order, the number of interrogatories or sets of interrogatories is not limited.

(2) Except as provided in such an order, interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered.

(b) *Answers and objections.* Each interrogatory shall be answered separately

and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections by the attorney making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 14 days after service of the interrogatories, or within such shorter or longer period as the presiding officer may allow. Answers may be used in the same manner as depositions of a party (see §1.321(d)).

(c) *Motion to compel an answer*. Any party to the proceeding may, within 7 days, move for an order with respect to any objection or other failure to answer an interrogatory. For purposes of this paragraph, an evasive or incomplete answer is a failure to answer; and if the motion is based on the assertion that the answer is evasive or incomplete, it shall contain a statement as to the scope and detail of an answer which would be considered responsive and complete. The party upon whom the interrogatories were served may file a response within 7 days after the motion is filed, to which he may append an answer or an amended answer. Additional pleadings should not be submitted and will not be considered.

(d) *Action by the presiding officer*. If the presiding officer determines that an objection is not justified, he shall order that the answer be served. If an interrogatory has not been answered, the presiding officer may rule that the right to object has been waived and may order that an answer be served. If an answer does not comply fully with the requirements of this section, the presiding officer may order that an amended answer be served, may specify the scope and detail of the matters to be covered by the amended answer, and may specify any appropriate procedural consequences (including adverse findings of fact and dismissal with prejudice) which will follow from the failure to make a full and responsive answer. If a full and responsive answer is not made, the presiding officer may issue an order invoking any of the procedural consequences specified in the order to compel an answer.

(e) *Appeal*. As order to compel an answer is not subject to appeal.

[33 FR 10572, July 25, 1968, as amended at 35 FR 17334, Nov. 11, 1970; 85 FR 63181, Oct. 6, 2020]

§1.325 Discovery and production of documents and things for inspection, copying, or photographing.

(a) A party to a Commission proceeding may request any other party except the Commission to produce and permit inspection and copying or photographing, by or on behalf of the requesting party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things which constitute or contain evidence within the scope of the examination permitted by §1.311(b) of this part and which are in his possession, custody, or control or to permit entry upon designated land or other property in his possession or control for purposes of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by §1.311(b) of this part.

(1) Copies of the request shall be filed with the Commission and served on the presiding officer and all other parties to the hearing proceeding.

(2) The party against whom the request was made must, within 10 days, comply with the request or object to the request, claiming a privilege or raising other proper objections. If the request is not complied with in whole or in part, the requesting party may file a motion to compel production of documents or access to property with the presiding officer. A motion to compel must be accompanied by a copy of the original request and the responding party's objection or claim of privilege. Motions to compel must be filed within five business days of the objection or claim of privilege.

(3) In resolving any disputes involving the production of documents or access to property, the presiding officer may direct that the materials objected to be presented to him for *in camera* inspection.

(b) Any party seeking the production of Commission records should proceed

under § 0.460 or § 0.461 of this chapter. See §§ 0.451 through 0.467.

[33 FR 463, Jan. 12, 1968, as amended at 40 FR 39509, Aug. 28, 1975; 56 FR 794, Jan. 9, 1991; 56 FR 25639, June 5, 1991; 76 FR 70908, Nov. 16, 2011; 85 FR 63181, Oct. 6, 2020]

SUBPENAS

AUTHORITY: Sections 1.331 and 1.333 through 1.340 are issued under sec. 409, 48 Stat. 1096; 47 U.S.C. 409.

§ 1.331 Who may sign and issue.

Subpenas requiring the attendance and testimony of witnesses, and subpenas requiring the production of any books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation or hearing, may be signed and issued by the presiding officer.

[85 FR 63181, Oct. 6, 2020]

§ 1.333 Requests for issuance of subpena.

(a) Unless submitted on the record while a hearing is in progress, requests for a subpena ad testificandum shall be submitted in writing.

(b) Requests for a subpena *duces tecum* shall be submitted in writing, duly subscribed and verified, and shall specify with particularity the books, papers, and documents desired and the facts expected to be proved thereby. Where the subpena *duces tecum* request is directed to a nonparty to the proceeding, the presiding officer may issue the same, upon request, without an accompanying subpena to enforce a notice to take depositions, provided for in paragraph (e) of this section, where it appears that the testimony of said person is not required in connection with the subpena *duces tecum*.

(c) All requests for subpenas shall be supported by a showing of the general relevance and materiality of the evidence sought.

(d) Requests for subpenas shall be submitted in triplicate, but need not be served on the parties to the proceeding.

(e) Requests for issuance of a subpena ad testificandum to enforce a notice to take depositions shall be submitted in writing. Such requests may be submitted with the notice or at a later date. The request shall not be granted until the period for the filing of motions opposing the taking of depositions has expired or, if a motion has been filed, until that motion has been acted on. Regardless of the time when the subpena request is submitted, it need not be accompanied by a showing that relevant and material evidence will be adduced, but merely that the person will be examined regarding a nonprivileged matter which is relevant to the hearing issues. The subpena request may ask that a subpena duces tecum be contemporaneously issued commanding the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by § 1.311(b) but in that event the subpena request will be subject to the provisions of § 1.313 and paragraph (b) of this section.

(f) Requests for issuance of a subpena duces tecum to enforce an order for the production of documents and things for inspection and copying under § 1.325 may be submitted with the motion requesting the issuance of such an order. Regardless of the time when the subpena request is submitted, it need not be accompanied by a showing that relevant and material evidence will be adduced, but merely that the documents and things to be examined contain nonprivileged matter which is relevant to the subject matter of the proceeding.

[28 FR 12425, Nov. 22, 1963, as amended at 33 FR 466, Jan. 12, 1968; 47 FR 51873, Nov. 18, 1982]

§ 1.334 Motions to quash.

Any person against whom a subpena is directed may file a motion to quash or limit the subpena, setting forth the reasons why the subpena should not be complied with or why it should be limited in scope.

§ 1.335 Rulings.

Prompt notice, including a brief statement of the reasons therefor, will be given of the denial, in whole or in part, of a request for subpena or of a motion to quash.

§ 1.336 Service of subpenas.

(a) A subpena may be served by a United States marshal or his deputy, by Commission personnel, or by any person who is not a party to the proceeding and is not less than 18 years of age.

(b) Service of a subpena upon the person named therein shall be made by exhibiting the original subpena to him, by reading the original subpena to him if he is unable to read, by delivering the duplicate subpena to him, and by tendering to him the fees for one day's attendance at the proceeding to which he is summoned and the mileage allowed by law. If the subpena is issued on behalf of the United States or an officer or agency thereof, attendance fees and mileage need not be tendered.

§ 1.337 Return of service.

(a) If service of the subpena is made by a person other than a United States marshal or his deputy such person shall make affidavit thereof, stating the date, time, and manner of service.

(b) In case of failure to make service, the reasons for the failure shall be stated on the original subpena by the person who attempted to make service.

(c) The original subpena, bearing or accompanied by the required return affidavit or statement, shall be returned forthwith to the Secretary of the Commission or, if so directed on the subpena, to the official before whom the person named in the subpena is required to appear.

§ 1.338 Subpena forms.

(a) Subpena forms are available on the Commission's internet site, *www.fcc.gov*, as FCC Form 766. These forms are to be completed and submitted with any request for issuance of a subpena.

(b) If the request for issuance of a subpena is granted, the ''Original'' and ''Duplicate'' copies of the subpena are returned to the person who submitted the request. The ''Triplicate'' copy is retained for the Commission's files.

(c) The ''Original'' copy of the subpena includes a form for proof of service. This form is to be executed by the person who effects service and returned by him to the Secretary of the Commission or, if so directed on the subpena, to the official before whom the person named in the subpena is required to appear.

(d) The ''Duplicate'' copy of the subpena shall be served upon the person named therein and retained by him. This copy should be presented in support of any claim for witness fees or mileage allowances for testimony on behalf of the Commission.

[28 FR 12425, Nov. 22, 1963, as amended at 85 FR 63181, Oct. 6, 2020]

§ 1.339 Witness fees.

Witnesses who are subpenaed and respond thereto are entitled to the same fees, including mileage, as are paid for like service in the courts of the United States. Fees shall be paid by the party at whose instance the testimony is taken.

§ 1.340 Attendance of witness; disobedience.

The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at any designated place of hearing. In case of disobedience to a subpena, the Commission or any party to a proceeding before the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

EVIDENCE

§ 1.351 Rules of evidence.

In hearings subject to this subpart B, any oral or documentary evidence may be adduced, but the presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence.

[85 FR 63181, Oct. 6, 2020]

§ 1.352 Cumulative evidence.

The introduction of cumulative evidence shall be avoided, and the number of witnesses that may be heard in behalf of a party on any issue may be limited.

§ 1.353 Further evidence during hearing.

At any stage of a hearing, the presiding officer may call for further evidence upon any issue and may require such evidence to be submitted by any party to the proceeding.

§ 1.354 Documents containing matter not material.

If material and relevant matter offered in evidence is embraced in a document containing other matter not material or relevant, and not intended to be put in evidence, such document will not be received, but the party offering the same shall present to other counsel, and to the presiding officer, the original document, together with true copies of such material and relevant matter taken therefrom, as it is desired to introduce. Upon presentation of such matter, material and relevant, in proper form, it may be received in evidence, and become a part of the record. Other counsel will be afforded an opportunity to introduce in evidence, in like manner, other portions of such document if found to be material and relevant.

§ 1.355 Documents in foreign language.

Every document, exhibit, or other paper written in a language other than English, which shall be filed in any proceeding, or in response to any order, shall be filed in the language in which it is written together with an English translation thereof duly verified under oath to be a true translation. Each copy of every such document, exhibit, or other paper filed shall be accompanied by a separate copy of the translation.

§ 1.356 Copies of exhibits.

No document or exhibit, or part thereof, shall be received as, or admitted in, evidence unless offered in duplicate. In addition, when exhibits of a documentary character are to be offered in evidence, copies shall be furnished to other counsel unless the presiding officer otherwise directs.

§ 1.357 Mechanical reproductions as evidence.

Unless offered for the sole purpose of attempting to prove or demonstrate sound effect, mechanical or physical reproductions of sound waves shall not be admitted in evidence. Any party desiring to offer any matter alleged to be contained therein or thereupon shall have such matter typewritten on paper of the size prescribed by § 1.49, and the same shall be identified and offered in duplicate in the same manner as other exhibits.

§ 1.358 Tariffs as evidence.

In case any matter contained in a tariff schedule on file with the Commission is offered in evidence, such tariff schedule need not be produced or marked for identification, but the matter so offered shall be specified with particularity (tariff and page number) in such manner as to be readily identified, and may be received in evidence by reference subject to check with the original tariff schedules on file.

§ 1.359 Proof of official record; authentication of copy.

An official record or entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by the judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent, or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

§ 1.360 Proof of lack of record.

The absence of an official record or entry of a specified tenor in an official record may be evidenced by a written statement signed by an officer, or by his deputy, who would have custody of the official record, if it existed, that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as provided in § 1.359. Such statement and certificate are admissible as evidence that the records of his office contain no such record or entry.

§ 1.361 Other proof of official record.

Sections 1.359 and 1.360 do not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

§ 1.362 Production of statements.

After a witness is called and has given direct testimony in an oral hearing, and before he or she is excused, any party may move for the production of any statement of such witness, or part thereof, pertaining to his or her direct testimony, in possession of the party calling the witness, if such statement has been reduced to writing and signed or otherwise approved or adopted by the witness. Such motion shall be directed to the presiding officer. If the party declines to furnish the statement, the testimony of the witness pertaining to the requested statement shall be stricken.

[85 FR 63181, Oct. 6, 2020]

§ 1.363 Introduction of statistical data.

(a) All statistical studies, offered in evidence in common carrier hearing proceedings, including but not limited to sample surveys, econometric analyses, and experiments, and those parts of other studies involving statistical methodology shall be described in a summary statement, with supplementary details added in appendices so as to give a comprehensive delineation of the assumptions made, the study plan utilized and the procedures undertaken. In the case of sample surveys, there shall be a clear description of the survey design, including the definition of the universe under study, the sampling frame, and the sampling units; an explanation of the method of selecting the sample and the characteristics measured or counted. In the case of econometric investigations, the econometric model shall be completely described and the reasons given for each assumption and statistical specification. The effects on the final results of changes in the assumptions should be made clear. When alternative models and variables have been employed, a record shall be kept of these alternative studies, so as to be available upon request. In the case of experimental analyses, a clear and complete description of the experimental design shall be set forth, including a specification of the controlled conditions and how the controls were realized. In addition, the methods of making observations and the adjustments, if any, to observed data shall be described. In the case of every kind of statistical study, the following items shall be set forth clearly: The formulas used for statistical estimates, standard errors and test statistics, the description of statistical tests, plus all related computations, computer programs and final results. Summary descriptions of input data shall be submitted. Upon request, the actual input data shall be made available.

(b) In the case of all studies and analyses offered in evidence in common carrier hearing proceedings, other than the kinds described in paragraph (a) of this section, there shall be a clear statement of the study plan, all relevant assumptions and a description of the techniques of data collection, estimation and/or testing. In addition, there shall be a clear statement of the facts and judgments upon which conclusions are based and a statement of the relative weights given to the various factors in arriving at each conclusion, together with an indication of the alternative courses of action considered. Lists of input data shall be made available upon request.

[35 FR 16254, Oct. 16, 1970]

§ 1.364 Testimony by speakerphone.

(a) If all parties to the proceeding consent and the presiding officer approves, the testimony of a witness may be taken by speakerphone.

(b) Documents used by the witness shall be made available to counsel by the party calling the witness in advance of the speakerphone testimony. The taking of testimony by speakerphone shall be subject to such other ground rules as the parties may agree upon.

[43 FR 33251, July 31, 1978]

HEARINGS ON A WRITTEN RECORD

SOURCE: 85 FR 63183, Oct. 6, 2020, unless otherwise noted.

§ 1.370 Purpose.

Hearings under this subpart B that the Commission or one of its Bureaus, acting on delegated authority, determines shall be conducted and resolved on a written record are subject to §§ 1.371 through 1.377. If an order designating a matter for hearing does not specify whether those rules apply to a hearing proceeding, and if the proceeding is not subject to 5 U.S.C. 554, the presiding officer may, in their discretion, conduct and resolve all or part of the hearing proceeding on a written record in accordance with §§ 1.371 through 1.377.

§ 1.371 General pleading requirements.

Written hearings shall be resolved on a written record consisting of affirmative case, responsive case, and reply case submissions, along with all associated evidence in the record, including stipulations and agreements of the parties and official notice of a material fact.

(a) All pleadings filed in any proceeding subject to these written hearing rules must be submitted in conformity with the requirements of §§ 1.4, 1.44, 1.47, 1.48, 1.49, 1.50, 1.51(a), and 1.52.

(b) Pleadings must be clear, concise, and direct. All matters should be pleaded fully and with specificity.

(c) Pleadings shall consist of numbered paragraphs and must be supported by relevant evidence. Assertions based on information and belief are prohibited unless made in good faith and accompanied by a declaration or affidavit explaining the basis for the party's belief and why the party could not reasonably ascertain the facts from any other source.

(d) Legal arguments must be supported by appropriate statutory, judicial, or administrative authority.

(e) Opposing authorities must be distinguished.

(f) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies. In addition, copies of state authorities relied upon shall be provided.

(g) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner before a decision is rendered on the merits.

(h) Pleadings shall identify the name, address, telephone number, and email address for either the filing party's attorney or, where a party is not represented by an attorney, the filing party. Pleadings may be signed by a party's attorney.

(i) Attachments to any pleading shall be Bates-stamped or otherwise identifiable by party and numbered sequentially. Parties shall cite to Bates-stamped or otherwise identifiable page numbers in their pleadings.

(j) Unless a schedule is specified in the order designating a matter for hearing, at the initial status conference under § 1.248(b), the presiding officer shall adopt a schedule for the sequential filing of pleadings required or permitted under these rules.

(k) Pleadings shall be served on all parties to the proceeding in accordance with § 1.211 and shall include a certificate of service. All pleadings shall be served on the presiding officer or case manager, as identified in the caption.

(l) Each pleading must contain a written verification that the signatory has read the submission and, to the best of their knowledge, information,

and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding. If any pleading or other submission is signed in violation of this provision, the Commission may upon motion or upon its own initiative impose appropriate sanctions.

(m) Any party to the proceeding may file a motion seeking waiver of any of the rules governing pleadings in written hearings. Such waiver may be granted for good cause shown.

(n) Any pleading that does not conform with the requirements of the applicable rules may be deemed defective. In such case, the presiding officer may strike the pleading or request that specified defects be corrected and that proper pleadings be filed with the Commission and served on the presiding officer or case manager and all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

(o) Any party that fails to respond to official correspondence, a request for additional information, or an order or directive from the presiding officer or case manager may be subject to appropriate sanctions.

§ 1.372 The affirmative case.

(a) Within 30 days after the completion of the discovery period as determined by the presiding officer, unless otherwise directed by the presiding officer, any party to the proceeding with the burden of proof shall file a pleading entitled ''affirmative case'' that fully addresses each of the issues designated for hearing. The affirmative case submission shall include:

(1) A statement of relevant material facts, supported by sworn statements based on personal knowledge, documentation, or by other materials subject to consideration by the presiding officer, and a full legal analysis of each of the issues designated for hearing;

(2) Citation to relevant sections of the Communications Act or Commission regulations or orders; and

(3) The relief sought.

(b) The affirmative case submission shall address all factual and legal questions designated for hearing, and state in detail the basis for the response to each such question. Responses based on information and belief are prohibited unless made in good faith and accompanied by a declaration or affidavit explaining the basis for the party's belief and why the party could not reasonably ascertain the facts. When a party intends in good faith to deny only part of a designated question in the affirmative case, that party shall specify so much of it as is true and shall deny only the remainder.

(c) Failure to address in an affirmative case submission all factual and legal questions designated for hearing may result in inferences adverse to the filing party.

§ 1.373 The responsive case.

(a) Any other party may file a responsive case submission in the manner prescribed under this section within 30 calendar days of the filing of the affirmative case submission, unless otherwise directed by the presiding officer. The responsive case submission shall include:

(1) A statement of relevant material facts, supported by sworn statements based on personal knowledge, documentation, or by other materials subject to consideration by the presiding officer, and a full legal analysis of any issues designated for hearing.

(2) Citation to relevant sections of the Communications Act or Commission regulations or orders; and

(3) Any relief sought.

(b) The responsive case submission shall respond specifically to all material allegations made in the affirmative case submission. Every effort shall be made to narrow the issues for resolution by the presiding officer.

(c) Statements of fact or law in an affirmative case filed pursuant to § 1.372 are deemed admitted when not rebutted in a responsive case submission.

§ 1.374 The reply case.

(a) Any party who filed an affirmative case may file and serve a reply case submission within 15 days of the

filing of any responsive case submission, unless otherwise directed by the presiding officer.

(b) The reply case submission shall contain statements of relevant material facts, supported by sworn statements based on personal knowledge, documentation, or by other materials subject to consideration by the presiding officer, and a full legal analysis that responds only to the factual allegations and legal arguments made in any responsive case. Other allegations or arguments will not be considered by the presiding officer.

(c) Failure to submit a reply case submission shall not be deemed an admission of any allegations contained in any responsive case.

§ 1.375 Other written submissions.

(a) The presiding officer may require or permit the parties to file other written submissions such as briefs, proposed findings of fact and conclusions of law, or other supplementary documents or pleadings. The presiding officer may limit the scope of any such pleadings to certain subjects or issues.

(b) The presiding officer may require the parties to submit any additional information deemed appropriate for a full, fair, and expeditious resolution of the proceeding.

§ 1.376 Oral hearing or argument.

(a) Notwithstanding any requirement in the designation order that the hearing be conducted and resolved on a written record, a party may file a motion to request an oral hearing pursuant to § 1.291. Any such motion shall be filed after the submission of all the pleadings but no later than the date established in the scheduling order. *See* §§ 1.248 and 1.372 through 1.374. The motion shall contain a list of genuine disputes as to outcome-determinative facts that the movant contends cannot adequately be resolved on a written record and a list of witnesses whose live testimony would be required to resolve such disputes. The motion also shall contain supporting legal analysis, including citations to relevant authorities and parts of the record. If the presiding officer finds that there is a genuine dispute as to an outcome-determinative fact that cannot adequately be resolved on a written record, the presiding officer shall conduct an oral hearing limited to testimony and cross-examination necessary to resolve that dispute.

(b) The presiding officer may, on his or her own motion following the receipt of all written submissions, conduct an oral hearing to resolve a genuine dispute as to an outcome-determinative fact that the presiding officer finds cannot adequately be resolved on a written record. Any such oral hearing shall be limited to testimony and cross-examination necessary to resolve that dispute.

(c) Oral argument shall be permitted only if the presiding officer determines that oral argument is necessary to resolution of the hearing.

§ 1.377 Certification of the written hearing record to the Commission for decision.

When the Commission is the presiding officer and it has appointed a case manager under § 1.242, the case manager shall certify the record for decision to the Commission promptly after the hearing record is closed. Notice of such certification shall be served on all parties to the proceeding.

Subpart C—Rulemaking Proceedings

AUTHORITY: 5 U.S.C. 553.

SOURCE: 28 FR 12432, Nov. 22, 1963, unless otherwise noted.

GENERAL

§ 1.399 Scope.

This subpart shall be applicable to notice and comment rulemakings proceedings conducted under 5 U.S.C. 553, and shall have no application to formal rulemaking (or rate making) proceedings unless the Commission directs that it shall govern the conduct of a particular proceeding.

[42 FR 25735, May 19, 1977]

§ 1.400 Definitions.

As used in this subpart, the term *party* refers to any person who participates in a proceeding by the timely filing of a petition for rule making, comments on a notice of proposed rule making, a petition for reconsideration, or responsive pleadings in the manner prescribed by this subpart. The term does not include those who submit letters, telegrams or other informal materials.

[41 FR 1287, Jan. 7, 1976]

PETITIONS AND RELATED PLEADINGS

§ 1.401 Petitions for rulemaking.

(a) Any interested person may petition for the issuance, amendment or repeal of a rule or regulation.

(b) The petition for rule making shall conform to the requirements of §§ 1.49, 1.52, and 1.419(b) (or § 1.420(e), if applicable), and shall be submitted or addressed to the Secretary, Federal Communications Commission, Washington, DC 20554, or may be submitted electronically.

(c) The petition shall set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of petitioner will be affected.

(d) Petitions for amendment of the FM Table of Assignments (§ 73.202 of this chapter) or the Television Table of Assignments (§ 73.606) shall be served by petitioner on any Commission licensee or permittee whose channel assignment would be changed by grant of the petition. The petition shall be accompanied by a certificate of service on such licensees or permittees. Petitions to amend the FM Table of Allotments must be accompanied by the appropriate construction permit application and payment of the appropriate application filing fee.

(e) Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

[28 FR 12432, Nov. 22, 1963, as amended at 28 FR 14503, Dec. 31, 1963; 40 FR 53391, Nov. 18, 1975; 45 FR 42621, June 25, 1980; 63 FR 24125, May 1, 1998; 71 FR 76215, Dec. 20, 2006]

§ 1.403 Notice and availability.

All petitions for rulemaking (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of § 1.401 will be given a file number and, promptly thereafter, a ''Public Notice'' will be issued (by means of a Commission release entitled ''Petitions for Rule Making Filed'') as to the petition, file number, nature of the proposal, and date of filing. Petitions for rulemaking are available at the Commission's Reference Information Center at the FCC's main office, located at the address indicated in 47 CFR 0.401(a), and may also be available electronically over the internet at *http://www.fcc.gov/*.

[85 FR 64405, Oct. 13, 2020]

§ 1.405 Responses to petitions; replies.

Except for petitions to amend the FM Television or Air-Ground Tables of Assignments:

(a) Any interested person may file a statement in support of or in opposition to a petition for rule making prior to Commission action on the petition but not later than 30 days after ''Public Notice'', as provided for in § 1.403, is given of the filing of such a petition. Such a statement shall be accompanied by proof of service upon the petitioner on or prior to the date of filing in conformity with § 1.47 and shall conform in other aspects with the requirements of §§ 1.49, 1.52, and 1.419(b).

(b) Any interested person may file a reply to statements in support of or in opposition to a petition for rule making prior to Commission action on the petition but not later than 15 days after the filing of such a statement. Such a reply shall be accompanied by proof of service upon the party or parties filing the statement or statements to which the reply is directed on or prior to the date of filing in conformity with § 1.47 and shall conform in other

aspects with the requirements of §§ 1.49, 1.52, and 1.419(b).

(c) No additional pleadings may be filed unless specifically requested by the Commission or authorized by it.

(d) The Commission may act on a petition for rule making at any time after the deadline for the filing of replies to statements in support of or in opposition to the petition. Statements in support of or in opposition to a petition for rule making, and replies thereto, shall not be filed after Commission action.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[28 FR 12413, Nov. 22, 1963, as amended at 28 FR 14503, Dec. 31, 1963; 45 FR 42621, June 25, 1980; 46 FR 60404, Dec. 9, 1981]

§ 1.407 Action on petitions.

If the Commission determines that the petition discloses sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding, and notice and public procedure thereon are required or deemed desirable by the Commission, an appropriate notice of proposed rule making will be issued. In those cases where notice and public procedure thereon are not required, the Commission may issue a final order amending the rules. In all other cases the petition for rule making will be denied and the petitioner will be notified of the Commission's action with the grounds therefor.

RULEMAKING PROCEEDINGS

§ 1.411 Commencement of rulemaking proceedings.

Rulemaking proceedings are commenced by the Commission, either on it own motion or on the basis of a petition for rulemaking. See §§ 1.401–1.407.

§ 1.412 Notice of proposed rulemaking.

(a) Except as provided in paragraphs (b) and (c) of this section, prior notice of proposed rulemaking will be given.

(1) Notice is ordinarily given by publication of a ''Notice of Proposed Rule Making'' in the FEDERAL REGISTER. A summary of the full decision adopted by the Commission constitutes a ''Notice of Proposed Rulemaking'' for purposes of FEDERAL REGISTER publication.

(2) If all persons subject to the proposed rules are named, the proposal may (in lieu of publication) be personally served upon those persons.

(3) If all persons subject to the proposed rules are named and have actual notice of the proposal as a matter of law, further prior notice of proposed rulemaking is not required.

(b) Rule changes (including adoption, amendment, or repeal of a rule or rules) relating to the following matters will ordinarily be adopted without prior notice:

(1) Any military, naval, or foreign affairs function of the United States.

(2) Any matter relating to Commission management or personnel or to public property, loans, grants, benefits, or contracts.

(3) Interpretative rules.

(4) General statements of policy.

(5) Rules of Commission organization, procedure, or practice.

(c) Rule changes may in addition be adopted without prior notice in any situation in which the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The finding of good cause and a statement of the basis for that finding are in such situations published with the rule changes.

(d) In addition to the notice provisions of paragraph (a) of this section, the Commission, before prescribing any requirements as to accounts, records, or memoranda to be kept by carriers, will notify the appropriate State agencies having jurisdiction over any carrier involved of the proposed requirements.

[28 FR 12432, Nov. 22, 1963, as amended at 51 FR 7445, Mar. 4, 1986]

§ 1.413 Content of notice.

A notice of the proposed issuance, amendment, or repeal of a rule will include the following:

(a) A statement of the time, nature and place of any public rulemaking proceeding to be held.

(b) Reference to the authority under which the issuance, amendment or repeal of a rule is proposed.

(c) Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(d) The docket number assigned to the proceeding.

(e) A statement of the time for filing comments and replies thereto.

§ 1.415 Comments and replies.

(a) After notice of proposed rulemaking is issued, the Commission will afford interested persons an opportunity to participate in the rulemaking proceeding through submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner.

(b) A reasonable time will be provided for submission of comments in support of or in opposition to proposed rules, and the time provided will be specified in the notice of proposed rulemaking.

(c) A reasonable time will be provided for filing comments in reply to the original comments, and the time provided will be specified in the notice of proposed rulemaking.

(d) No additional comments may be filed unless specifically requested or authorized by the Commission.

NOTE: In some (but not all) rulemaking proceedings, interested persons may also communicate with the Commission and its staff on an *ex parte* basis, provided certain procedures are followed. See §§1.420 and 1.1200 *et seq*. See also __ FCC 2d __ (1980) (*i.e.*, this order).

(e) For time limits for filing motions for extension of time for filing responses to petitions for rulemaking, replies to such responses, comments filed in response to notices of proposed rulemaking, replies to such comments, see §1.46(b).

[28 FR 12432, Nov. 22, 1963, as amended at 42 FR 28888, June 6, 1977; 45 FR 45591, July 7, 1980; 52 FR 37460, Oct. 7, 1987]

§ 1.419 Form of comments and replies; number of copies.

(a) Comments, replies, and other documents filed in a rulemaking proceeding shall conform to the requirements of §1.49.

(b) Unless otherwise specified by Commission rules, an original and one copy of all comments, briefs and other documents filed in a rulemaking proceeding shall be furnished to the Commission. The distribution of such copies shall be as follows:

Secretary (original)	1
Reference Information Center	1
Total	2

Participants filing the required 2 copies who also wish each Commissioner to have a personal copy of the comments may file an additional 5 copies. The distribution of such copies shall be as follows:

Commissioners	5
Secretary (original)	1
Reference Information Center	1
Total	7

Similarly, members of the general public who wish to express their interest by participating informally in a rulemaking proceeding may do so by submitting an original and one copy of their comments, without regard to form, provided only that the Docket Number is specified in the heading. Informal comments filed after close of the reply comment period, or, if on reconsideration, the reconsideration reply comment period, should be labeled ''ex parte'' pursuant to §1.1206(a). Letters submitted to Commissioners or Commission staff will be treated in the same way as informal comments, as set forth above. Also, to the extent that an informal participant wishes to submit to each Commissioner a personal copy of a comment and has not submitted or cannot submit the comment by electronic mail, the participant may file an additional 5 copies. The distribution of such copies shall be as follows:

Commissioners	5
Secretary (original)	1
Reference Information Center	1
Total	7

(c) Any person desiring to file identical documents in more than one docketed rulemaking proceeding shall furnish the Commission two additional copies of any such document for each additional docket. This requirement does not apply if the proceedings have been consolidated.

(d) Participants that file comments and replies in electronic form need only submit one copy of those comments, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments.

(e) Comments and replies and other documents filed in electronic form by a party represented by an attorney shall include the name and mailing address of at least one attorney of record. Parties not represented by an attorney that file comments and replies and other documents in electronic form shall provide their name and mailing address.

[28 FR 12432, Nov. 22, 1963, as amended at 41 FR 50399, Nov. 16, 1976; 50 FR 26567, June 27, 1985; 54 FR 29037, July 11, 1989; 63 FR 24125, May 1, 1998; 63 FR 56091, Oct. 21, 1998; 67 FR 13223, Mar. 21, 2002; 76 FR 24392, May 2, 2011]

§ 1.420 Additional procedures in proceedings for amendment of the FM or TV Tables of Allotments, or for amendment of certain FM assignments.

(a) Comments filed in proceedings for amendment of the FM Table of Allotments (§ 73.202 of this chapter) or the Television Table of Allotments (§ 73.622(j) of this chapter) which are initiated on a petition for rule making shall be served on petitioner by the person who files the comments.

(b) Reply comments filed in proceedings for amendment of the FM or Television Tables of Allotments shall be served on the person(s) who filed the comments to which the reply is directed.

(c) Such comments and reply comments shall be accompanied by a certificate of service.

(d) Counterproposals shall be advanced in initial comments only and will not be considered if they are advanced in reply comments.

(e) An original and 4 copies of all petitions for rulemaking, comments, reply comments, and other pleadings shall be filed with the Commission.

(f) Petitions for reconsideration and responsive pleadings shall be served on parties to the proceeding and on any licensee or permittee whose authorization may be modified to specify operation on a different channel, and shall be accompanied by a certificate of service.

(g) The Commission may modify the license or permit of a UHF TV station to a VHF channel in the same community in the course of the rule making proceeding to amend § 73.622(j), or it may modify the license or permit of an FM station to another class of channel through notice and comment procedures, if any of the following conditions are met:

(1) There is no other timely filed expression of interest, or

(2) If another interest in the proposed channel is timely filed, an additional equivalent class of channel is also allotted, assigned or available for application.

NOTE TO PARAGRAPH (g): In certain situations, a licensee or permittee may seek an adjacent, intermediate frequency or co-channel upgrade by application. See § 73.203(b) of this chapter.

(h) Where licensees (or permittees) of television broadcast stations jointly petition to amend § 73.622(j) and to exchange channels, and where one of the licensees (or permittees) operates on a commercial channel while the other operates on a reserved noncommercial educational channel within the same band, and the stations serve substantially the same market, then the Commission may amend § 73.606(b) or § 73.622(j) and modify the licenses (or permits) of the petitioners to specify operation on the appropriate channels upon a finding that such action will promote the public interest, convenience, and necessity.

NOTE 1 TO PARAGRAPH (h): Licensees and permittees operating Class A FM stations who seek to upgrade their facilities to Class B1, B, C3, C2, C1, or C on Channel 221, and whose proposed 1 mV/m signal contours would overlap the Grade B contour of a television station operating on Channel 6 must meet a particularly heavy burden by demonstrating that grants of their upgrade requests are in the public interest. In this regard, the Commission will examine the record in rule making proceedings to determine the availability of existing and potential non-commercial education service.

(i) In the course of the rule making proceeding to amend § 73.202(b) or § 73.622(j), the Commission may modify

the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

(j) Whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the party withdrawing its interest nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the expression of interest;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the dismissal or withdrawal of the expression of interest.

(5) In addition, within 5 days of a party's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither it nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the party withdrawing its expression of interest; and

(ii) The terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

NOTE TO §1.420: The reclassification of a Class C station in accordance with the procedure set forth in Note 4 to §73.3573 may be initiated through the filing of an original petition for amendment of the FM Table of Allotments. The Commission will notify the affected Class C station licensee of the proposed reclassification by issuing a notice of proposed rule making, except that where a triggering petition proposes an amendment or amendments to the FM Table of Allotments in addition to the proposed reclassification, the Commission will issue an order to show cause as set forth in Note 4 to §73.3573, and a notice of proposed rule making will be issued only after the reclassification issue is resolved. Triggering petitions will be dismissed upon the filing, rather than the grant, of an acceptable construction permit application to increase antenna height to at least 451 meters HAAT by a subject Class C station.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[39 FR 44022, Dec. 20, 1974, as amended at 40 FR 53391, Nov. 18, 1975; 41 FR 1287, Jan. 7, 1976; 51 FR 15629, Apr. 25, 1986; 51 FR 20291, June 4, 1986; 52 FR 8260, Mar. 17, 1987; 52 FR 25866, July 9, 1987; 54 FR 16366, Apr. 24, 1989; 54 FR 26201, June 22, 1989; 55 FR 28914, July 16, 1990; 58 FR 38535, July 19, 1993; 59 FR 59503, Nov. 17, 1994; 61 FR 43472, Aug. 23, 1996; 65 FR 79776, Dec. 20, 2000; 71 FR 76215, Dec. 20, 2006; 86 FR 66194, Nov. 22, 2021]

§1.421 Further notice of rulemaking.

In any rulemaking proceeding where the Commission deems it warranted, a further notice of proposed rulemaking will be issued with opportunity for parties of record and other interested persons to submit comments in conformity with §§1.415 and 1.419.

§1.423 Oral argument and other proceedings.

In any rulemaking where the Commission determines that an oral argument, hearing or any other type of proceeding is warranted, notice of the time, place and nature of such proceeding will be published in the FEDERAL REGISTER.

[58 FR 66300, Dec. 20, 1993]

§1.425 Commission action.

The Commission will consider all relevant comments and material of record before taking final action in a rulemaking proceeding and will issue a decision incorporating its finding and a brief statement of the reasons therefor.

§1.427 Effective date of rules.

(a) Any rule issued by the Commission will be made effective not less than 30 days from the time it is published in the FEDERAL REGISTER except as otherwise specified in paragraphs (b)

and (c) of this section. If the report and order adopting the rule does not specify the date on which the rule becomes effective, the effective date shall be 30 days after the date on which the rule is published in the FEDERAL REGISTER, unless a later date is required by statute or is otherwise specified by the Commission.

(b) For good cause found and published with the rule, any rule issued by the Commission may be made effective within less than 30 days from the time it is published in the FEDERAL REGISTER. Rules involving any military, naval or foreign affairs function of the United States; matters relating to agency management or personnel, public property, loans, grants, benefits or contracts; rules granting or recognizing exemption or relieving restriction; rules of organization, procedure or practice; or interpretative rules; and statements of policy may be made effective without regard to the 30-day requirement.

(c) In cases of alterations by the Commission in the required manner or form of keeping accounts by carriers, notice will be served upon affected carriers not less than 6 months prior to the effective date of such alterations.

[28 FR 12432, Nov. 22, 1963, as amended at 76 FR 24392, May 2, 2011]

§ 1.429 Petition for reconsideration of final orders in rulemaking proceedings.

(a) Any interested person may petition for reconsideration of a final action in a proceeding conducted under this subpart (see §§ 1.407 and 1.425). Where the action was taken by the Commission, the petition will be acted on by the Commission. Where action was taken by a staff official under delegated authority, the petition may be acted on by the staff official or referred to the Commission for action.

NOTE: The staff has been authorized to act on rulemaking proceedings described in § 1.420 and is authorized to make editorial changes in the rules (see § 0.231(d)).

(b) A petition for reconsideration which relies on facts or arguments which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;

(2) The facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts or arguments relied on is required in the public interest.

(c) The petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken should be changed.

(d) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b). No supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement. The petition for reconsideration shall not exceed 25 double-spaced typewritten pages. See also § 1.49(f).

(e) Except as provided in § 1.420(f), petitions for reconsideration need not be served on parties to the proceeding. (However, where the number of parties is relatively small, the Commission encourages the service of petitions for reconsideration and other pleadings, and agreements among parties to exchange copies of pleadings. See also § 1.47(d) regarding electronic service of documents.) When a petition for reconsideration is timely filed in proper form, public notice of its filing is published in the FEDERAL REGISTER. The time for filing oppositions to the petition runs from the date of public notice. See § 1.4(b).

(f) Oppositions to a petition for reconsideration shall be filed within 15 days after the date of public notice of the petition's filing and need be served

only on the person who filed the petition. See also §1.49(d). Oppositions shall not exceed 25 double-spaced typewritten pages. See §1.49(f).

(g) Replies to an opposition shall be filed within 10 days after the time for filing oppositions has expired and need be served only on the person who filed the opposition. Replies shall not exceed 10 double-spaced typewritten pages. See also §§1.49(d) and 1.49(f).

(h) Petitions for reconsideration, oppositions and replies shall conform to the requirements of §§1.49 and 1.52, except that they need not be verified. Except as provided in §1.420(e), an original and 11 copies shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System. Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed. Parties filing in electronic form need only submit one copy.

(i) The Commission may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Any order addressing a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstance, a second petition for reconsideration may be dismissed by the staff as repetitious. In no event shall a ruling which denies a petition for reconsideration be considered a modification of the original order.

(j) The filing of a petition for reconsideration is not a condition precedent to judicial review of any action taken by the Commission, except where the person seeking such review was not a party to the proceeding resulting in the action or relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. Subject to the provisions of paragraph (b) of this section, such a person may qualify to seek judicial review by filing a petition for reconsideration.

(k) Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with any rule or operate in any manner to stay or postpone its enforcement. However, upon good cause shown, the Commission will stay the effective date of a rule pending a decision on a petition for reconsideration. See, however, §1.420(f).

(l) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

(1) Fail to identify any material error, omission, or reason warranting reconsideration;

(2) Rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of paragraphs (b)(1) through (3) of this section;

(3) Rely on arguments that have been fully considered and rejected by the Commission within the same proceeding;

(4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (c) of this section;

(5) Relate to matters outside the scope of the order for which reconsideration is sought;

(6) Omit information required by these rules to be included with a petition for reconsideration;

(7) Fail to comply with the procedural requirements set forth in paragraphs (d), (e), and (h) of this section;

(8) Relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under paragraph (b) of this section; or

(9) Are untimely.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[41 FR 1287, Jan. 7, 1976, as amended at 44 FR 5436, Jan. 26, 1979; 46 FR 18556, Mar. 25, 1981; 52 FR 49161, Dec. 30, 1987; 63 FR 24126, May 1, 1998; 76 FR 24392, May 2, 2011]

INQUIRIES

§ 1.430 Proceedings on a notice of inquiry.

The provisions of this subpart also govern proceedings commenced by issuing a ''Notice of Inquiry,'' except that such proceedings do not result in the adoption of rules, and Notices of Inquiry are not required to be published in the FEDERAL REGISTER.

[51 FR 7445, Mar. 4, 1986]

Subpart D [Reserved]

Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers

SOURCE: 28 FR 12450, Nov. 22, 1963, unless otherwise noted.

GENERAL

§ 1.701 Show cause orders.

(a) The Commission may commence any proceeding within its jurisdiction against any common carrier by serving upon the carrier an order to show cause. The order shall contain a statement of the particulars and matters concerning which the Commission is inquiring and the reasons for such action, and will call upon the carrier to appear before the Commission at a place and time therein stated and give evidence upon the matters specified in the order.

(b) Any carrier upon whom an order has been served under this section shall file its answer within the time specified in the order. Such answer shall specifically and completely respond to all allegations and matters contained in the show cause order.

(c) All papers filed by a carrier in a proceeding under this section shall conform with the specifications of §§ 1.49 and 1.50 and the subscription and verification requirements of § 1.52.

[28 FR 12450, Nov. 22, 1963, as amended at 36 FR 7423, Apr. 20, 1971]

§ 1.703 Appearances.

(a) *Hearings*. Except as otherwise required by § 1.221 regarding application proceedings, by § 1.91 regarding proceedings instituted under section 312 of the Communications Act of 1934, as amended, or by Commission order in any proceeding, no written statement indicating intent to appear need be filed in advance of actual appearance at any hearing by any person or his attorney.

(b) *Oral arguments*. Within 5 days after release of an order designating an initial decision for oral argument or within such other time as may be specified in the order, any party who wishes to participate in the oral argument shall file a written statement indicating that he will appear and participate. Within such time as may be specified in an order designating any other matter for oral argument, any person wishing to participate in the oral argument shall file a written statement to that effect setting forth the reasons for his interest in the matter. The Commission will advise him whether he may participate. (See § 1.277 for penalties for failure to file appearance statements in proceedings involving oral arguments on initial decisions.)

(c) *Commission counsel*. The requirement of paragraph (b) of this section shall not apply to counsel representing the Commission or the Chief of the Enforcement Bureau.

[28 FR 12450, Nov. 22, 1963, as amended at 67 FR 13223, Mar. 21, 2002]

COMPLAINTS

§ 1.711 Formal or informal complaints.

Complaints filed against carriers under section 208 of the Communications Act may be either formal or informal.

INFORMAL COMPLAINTS

§ 1.716 Form.

An informal complaint shall be in writing and should contain: (a) The name, address and telephone number of the complaint, (b) the name of the carrier against which the complaint is made, (c) a complete statement of the facts tending to show that such carrier did or omitted to do anything in contravention of the Communications Act, and (d) the specific relief of satisfaction sought.

[51 FR 16039, Apr. 30, 1986]

§ 1.717 Procedure.

The Commission will forward informal complaints to the appropriate carrier for investigation and may set a due date for the carrier to provide a written response to the informal complaint to the Commission, with a copy to the complainant. The response will advise the Commission of the carrier's satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the carrier's response or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed. In all other cases, the Commission will notify the complainant that if the complainant is not satisfied by the carrier's response, or if the carrier has failed to submit a response by the due date, the complainant may file a formal complaint in accordance with § 1.721.

[83 FR 44831, Sept. 4, 2018]

§ 1.718 Unsatisfied informal complaints; formal complaints relating back to the filing dates of informal complaints.

When an informal complaint has not been satisfied pursuant to § 1.717, the complainant may file a formal complaint with this Commission in the form specified in § 1.721. Such filing will be deemed to relate back to the filing date of the informal complaint: *Provided*, That the formal complaint: Is filed within 6 months from the date of the carrier's response, or if no response has been filed, within 6 months of the due date for the response; makes reference to the date of the informal complaint, and is based on the same cause of action as the informal complaint. If no formal complaint is filed within the 6-month period, the informal complaint proceeding will be closed.

[83 FR 44831, Sept. 4, 2018]

§ 1.719 Informal complaints filed pursuant to section 258.

(a) Notwithstanding the requirements of §§ 1.716 through 1.718, the following procedures shall apply to complaints alleging that a carrier has violated section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, by making an unauthorized change of a subscriber's preferred carrier, as defined by § 64.1100(e) of this chapter.

(b) *Form*. The complaint shall be in writing, and should contain: The complainant's name, address, telephone number and e-mail address (if the complainant has one); the name of both the allegedly unauthorized carrier, as defined by § 64.1100(d) of this chapter, and authorized carrier, as defined by § 64.1100(c) of this chapter; a complete statement of the facts (including any documentation) tending to show that such carrier engaged in an unauthorized change of the subscriber's preferred carrier; a statement of whether the complainant has paid any disputed charges to the allegedly unauthorized carrier; and the specific relief sought.

(c) *Procedure*. The Commission will resolve slamming complaints under the definitions and procedures established in §§ 64.1100 through 64.1190 of this chapter. The Commission will issue a written (or electronic) order informing the complainant, the unauthorized carrier, and the authorized carrier of its finding, and ordering the appropriate remedy, if any, as defined by §§ 64.1160 through 64.1170 of this chapter.

(d) Unsatisfied Informal Complaints Involving Unauthorized Changes of a Subscriber's Preferred Carrier; Formal Complaints Relating Back to the Filing Dates of Informal Complaints. If the complainant is unsatisfied with the resolution of a complaint under this section, the complainant may file a formal complaint with the Commission in the form specified in § 1.721. Such filing will be deemed to relate back to the filing date of the informal complaint filed under this section, so long as the informal complaint complied with the requirements of paragraph (b) of this section and provided that: The formal complaint is filed within 45 days from the date an order resolving the informal complaint filed under this section is mailed or delivered electronically to the complainant; makes reference to both the informal complaint number assigned to and the initial date of filing the informal complaint filed under this section; and is based on the same cause of action as the informal

complaint filed under this section. If no formal complaint is filed within the 45–day period, the complainant will be deemed to have abandoned its right to bring a formal complaint regarding the cause of action at issue.

[65 FR 47690, Aug. 3, 2000]

FORMAL COMPLAINTS

§ 1.720 Purpose.

The following procedural rules apply to formal complaint proceedings under 47 U.S.C. 208, pole attachment complaint proceedings under 47 U.S.C. 224, and advanced communications services and equipment formal complaint proceedings under 47 U.S.C. 255, 617, and 619, and part 14 of this chapter. Additional rules relevant only to pole attachment complaint proceedings are provided in subpart J of this part.

[83 FR 44832, Sept. 4, 2018]

§ 1.721 General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, reply, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated evidence in the record. The Commission may also require or permit other written submissions such as briefs, proposed findings of fact and conclusions of law, or other supplementary documents or pleadings.

(a) All papers filed in any proceeding subject to this part must be drawn in conformity with the requirements of §§ 1.49, 1.50, and 1.52.

(b) Pleadings must be clear, concise, and direct. All matters concerning a claim, defense or requested remedy, including damages, should be pleaded fully and with specificity.

(c) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or a Commission regulation or order, or a defense to an alleged violation.

(d) Averred facts, claims, or defenses shall be made in numbered paragraphs and must be supported by relevant evidence. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth. Assertions based on information and belief are prohibited unless made in good faith and accompanied by a declaration or affidavit explaining the basis for the party's belief and why the party could not reasonably ascertain the facts from any other source.

(e) Legal arguments must be supported by appropriate statutory, judicial, or administrative authority.

(f) Opposing authorities must be distinguished.

(g) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies. In addition, copies of state authorities relied upon shall be provided.

(h) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner before a decision is rendered on the merits of the complaint.

(i) Specific reference shall be made to any tariff or contract provision relied on in support of a claim or defense. Copies of relevant tariffs, contracts, or relevant portions that are referred to or relied upon in a complaint, answer, or other pleading shall be appended to such pleading.

(j) Pleadings shall identify the name, address, telephone number, and email address for either the filing party's attorney or, where a party is not represented by an attorney, the filing party. Pleadings may be signed by a party's attorney.

(k) All attachments shall be Bates-stamped or otherwise numbered sequentially. Parties shall cite to Bates-stamped page numbers in their pleadings.

(l) Pleadings shall be served on all parties to the proceeding in accordance with § 1.734 and shall include a certificate of service.

(m) Each pleading or other submission must contain a written verification that the signatory has read the submission and, to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding. If any pleading or other submission is signed in violation of this provision, the Commission may upon motion or upon its own initiative impose appropriate sanctions.

(n) Parties may petition the staff, pursuant to §1.3, for a waiver of any of the rules governing formal complaints. Such waiver may be granted for good cause shown.

(o) A complaint may, on request of the filing party, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the complaint. A request for the return of an initiating document will be regarded as a request for dismissal.

(p) Amendments or supplements to complaints to add new claims or requests for relief are prohibited.

(q) Failure to prosecute a complaint will be cause for dismissal.

(r) Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act, or a Commission regulation or order, will be dismissed. In such case, any amendment or supplement to such document will be considered a new filing which must be made within any applicable statutory limitations of actions.

(s) Any other pleading that does not conform with the requirements of the applicable rules may be deemed defective. In such case the Commission may strike the pleading or request that specified defects be corrected and that proper pleadings be filed with the Commission and served on all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

(t) Pleadings shall be construed so as to do justice.

(u) Any party that fails to respond to official correspondence, a request for additional information, or an order or directive from the Commission may be subject to appropriate sanctions.

[83 FR 44832, Sept. 4, 2018]

§ 1.722 Format and content of complaints.

A formal complaint shall contain:

(a) The name of each complainant and defendant;

(b) The occupation, address and telephone number of each complainant and, to the extent known, each defendant;

(c) The name, address, telephone number, and email address of complainant's attorney, if represented by counsel;

(d) Citation to the section of the Communications Act or Commission regulation or order alleged to have been violated; each such alleged violation shall be stated in a separate count;

(e) Legal analysis relevant to the claims and arguments set forth therein;

(f) The relief sought, including recovery of damages and the amount of damages claimed, if known;

(g) Certification that the complainant has, in good faith, discussed or attempted to discuss the possibility of settlement with each defendant prior to the filing of the formal complaint. In disputes between businesses, associations, or other organizations, the certification shall include a statement that the complainant has engaged or attempted to engage in executive-level discussions concerning the possibility of settlement. Executive-level discussions are discussions among representatives of the parties who have sufficient authority to make binding decisions on behalf of the entity they represent regarding the subject matter of the discussions. Such certification shall include a statement that, prior to the filing of the complaint, the complainant notified each defendant in writing of the allegations that form the basis of the complaint and invited a response within a reasonable period

of time. A refusal by a defendant to engage in discussions contemplated by this rule may constitute an unreasonable practice under the Act. The certification shall also include a brief summary of all additional steps taken to resolve the dispute prior to the filing of the formal complaint;

(h) A statement explaining whether a separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or same set of facts, in whole or in part, or whether the complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment rulemaking proceeding that is concurrently before the Commission;

(i) An information designation containing:

(1) The name and, if known, the address and telephone number of each individual likely to have information relevant to the proceeding, along with the subjects of that information, excluding individuals otherwise identified in the complaint or exhibits thereto, and individuals employed by another party; and

(2) A copy—or a description by category and location—of all relevant documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control, excluding documents submitted with the complaint.

(j) A completed Formal Complaint Intake Form;

(k) A declaration, under penalty of perjury, by the complainant or complainant's counsel describing the amount, method, and date of the complainant's payment of the filing fee required under § 1.1106 and the complainant's 10-digit FCC Registration Number, as required by subpart W of this part. Submission of a complaint without the FCC Registration Number will result in dismissal of the complaint.

[83 FR 44832, Sept. 4, 2018]

§ 1.723 Damages.

(a) If a complainant in a formal complaint proceeding wishes to recover damages, the complaint must contain a clear and unequivocal request for damages.

(b) In all cases in which recovery of damages is sought, the complaint must include either:

(1) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to prove the amount of such damages; or

(2) If any information not in the possession of the complainant is necessary to develop a detailed computation of damages, an explanation of:

(i) Why such information is unavailable to the complaining party;

(ii) The factual basis the complainant has for believing that such evidence of damages exists; and

(iii) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

(c) If a complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the complainant must:

(1) Comply with paragraph (a) of this section, and

(2) State clearly and unequivocally that the complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief will be made.

(d) If the Commission decides that a determination of damages would best be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the Commission may at any time bifurcate the case and order that the initial proceeding will determine only liability and prospective relief, and that a separate, subsequent proceeding initiated in accordance with paragraph (e) of this section will determine damages.

(e) If a complainant exercises its right under paragraph (c) of this section, or the Commission invokes its authority under paragraph (d) of this section, the complainant may initiate a

separate proceeding to obtain a determination of damages by filing a supplemental complaint within sixty days after public notice (as defined in §1.4(b)) of a decision that contains a finding of liability on the merits of the original complaint. Supplemental complaints filed pursuant to this section need not comply with the requirements in §§1.721(c) or 1.722(d), (g), (h), (j), and (k). The supplemental complaint shall be deemed, for statutory limitations purposes, to relate back to the date of the original complaint.

(f) The Commission may, in its discretion, order the defendant either to post a bond for, or deposit into an interest bearing escrow account, a sum equal to the amount of damages which the Commission finds, upon preliminary investigation, is likely to be ordered after the issue of damages is fully litigated, or some lesser sum which may be appropriate, provided the Commission finds that the grant of this relief is favored on balance upon consideration of the following factors:

(1) The complainant's potential irreparable injury in the absence of such deposit;

(2) The extent to which damages can be accurately calculated;

(3) The balance of the hardships between the complainant and the defendant; and

(4) Whether public interest considerations favor the posting of the bond or ordering of the deposit.

(g) The Commission may, in its discretion, end adjudication of damages by adopting a damages computation method or formula. In such cases, the parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated method or formula. Within 30 days of the release date of the damages order, parties shall submit jointly to the Commission either:

(1) A statement detailing the parties' agreement as to the amount of damages;

(2) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(3) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(h) In any proceeding to which no statutory deadline applies, the Commission may, in its discretion, suspend ongoing damages proceedings to provide the parties with time to pursue settlement negotiations or mediation under §1.737.

[83 FR 44832, Sept. 4, 2018]

§1.724 Complaints governed by section 208(b)(1) of the Act.

(a) Any party that intends to file a complaint subject to the 5-month deadline in 47 U.S.C. 208(b)(1) must comply with the pre-complaint procedures below. The Enforcement Bureau's Market Disputes Resolution Division will not process complaints subject to the 5-month deadline unless the filer complies with these procedures.

(b) A party seeking to file a complaint subject to 47 U.S.C. 208(b)(1) shall notify the Chief of the Market Disputes Resolution Division in writing of its intent to file the complaint, and provide a copy of the letter to the defendant. Commission staff will convene a conference with both parties as soon as practicable. During that conference, the staff may discuss, among other things:

(1) Scheduling in the case;

(2) Narrowing factual and legal issues in dispute;

(3) Information exchange and discovery necessary to adjudicate the dispute;

(4) Entry of a protective order governing confidential material; and

(5) Preparation for and scheduling a mandatory settlement negotiation session at the Commission.

(c) Staff will endeavor to complete the pre-complaint process as expeditiously as possible. Staff may direct the parties to exchange relevant information during the pre-complaint period.

[83 FR 44832, Sept. 4, 2018]

§1.725 Joinder of complainants and causes of action.

(a) Two or more complainants may join in one complaint if their respective causes of action are against the

same defendant and concern substantially the same facts and alleged violation of the Communications Act or Commission regulation or order.

(b) Two or more grounds of complaint involving substantially the same facts may be included in one complaint, but should be separately stated and numbered.

[83 FR 44832, Sept. 4, 2018]

§ 1.726 Answers.

(a) Any defendant upon which a copy of a formal complaint is served shall answer such complaint in the manner prescribed under this section within 30 calendar days of service of the formal complaint by the complainant, unless otherwise directed by the Commission.

(b) The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Every effort shall be made to narrow the issues in the answer. The defendant shall state concisely its defense to each claim asserted, admit or deny the averments on which the complainant relies, and state in detail the basis for admitting or denying such averment. General denials are prohibited. Denials based on information and belief are prohibited unless made in good faith and accompanied by a declaration or affidavit explaining the basis for the defendant's belief and why the defendant could not reasonably ascertain the facts from the complainant or any other source. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the defendant shall specify so much of it as is true and shall deny only the remainder. The defendant may deny the allegations of the complaint as specific denials of either designated averments or paragraphs.

(c) The answer shall include legal analysis relevant to the claims and arguments set forth therein.

(d) Averments in a complaint or supplemental complaint filed pursuant to § 1.723(d) are deemed to be admitted when not denied in the answer.

(e) Affirmative defenses to allegations in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (b) of this section.

(f) The answer shall include an information designation containing:

(1) The name and, if known, the address and telephone number of each individual likely to have information relevant to the proceeding, along with the subjects of that information, excluding individuals otherwise identified in the complaint, answer, or exhibits thereto, and individuals employed by another party; and

(2) A copy—or a description by category and location—of all relevant documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control, excluding documents submitted with the complaint or answer.

(g) Failure to file an answer may be deemed an admission of the material facts alleged in the complaint. Any defendant that fails to file and serve an answer within the time and in the manner prescribed by this part may be deemed in default and an order may be entered against such defendant in accordance with the allegations contained in the complaint.

[83 FR 44832, Sept. 4, 2018]

§ 1.727 Cross-complaints and counterclaims.

Cross-complaints seeking any relief within the jurisdiction of the Commission against any party (complainant or defendant) to that proceeding are prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint in accordance with §§ 1.720 through 1.740. For purposes of this subpart, the term ''cross-complaint'' shall include counterclaims.

[83 FR 44832, Sept. 4, 2018]

§ 1.728 Replies.

(a) A complainant shall file and serve a reply within 10 calendar days of service of the answer, unless otherwise directed by the Commission. The reply shall contain statements of relevant,

material facts and legal arguments that respond to the factual allegations and legal arguments made by the defendant. Other allegations or arguments will not be considered by the Commission.

(b) Failure to reply will not be deemed an admission of any allegations contained in the responsive pleading, except with respect to any affirmative defense set forth therein. Failure to reply to an affirmative defense shall be deemed an admission of such affirmative defense and of any facts supporting such affirmative defense that are not specifically contradicted in the complaint.

(c) The reply shall include legal analysis relevant to the claims and arguments set forth therein.

(d) The reply shall include an information designation containing:

(1) The name and, if known, the address and telephone number of each individual likely to have information relevant to the proceeding and addressed in the reply, along with the subjects of that information, excluding individuals otherwise identified in the complaint, answer, reply, or exhibits thereto, and individuals employed by another party; and

(2) A copy—or a description by category and location—of all relevant documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control that are addressed in the reply, excluding documents submitted with the complaint or answer.

[83 FR 44832, Sept. 4, 2018]

§ 1.729 Motions.

(a) A request for a Commission order shall be by written motion, stating with particularity the grounds and authority therefor, including any supporting legal analysis, and setting forth the relief sought.

(b) Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion.

(c) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(d) Motions to dismiss all or part of a complaint are permitted. The filing of a motion to dismiss does not suspend any other filing deadlines under the Commission's rules, unless staff issues an order suspending such deadlines.

(e) Oppositions to motions shall be filed and served within 5 business days after the motion is served. Oppositions shall be limited to the specific issues and allegations contained in the motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting the motion.

(f) No reply may be filed to an opposition to a motion, except under direction of Commission staff.

[83 FR 44832, Sept. 4, 2018]

§ 1.730 Discovery.

(a) A complainant may file with the Commission and serve on a defendant, concurrently with its complaint, up to 10 written interrogatories. A defendant may file with the Commission and serve on a complainant, concurrently with its answer, up to 10 written interrogatories. A complainant may file with the Commission and serve on a defendant, concurrently with its reply, up to five additional written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Interrogatories filed and served pursuant to this procedure may be used to seek discovery of any nonprivileged matter that is relevant to the material facts in dispute in the pending proceeding. This procedure may not be employed for the purpose of delay, harassment, or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the proceeding.

(b) Interrogatories filed and served pursuant to paragraph (a) of this section shall contain an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) Unless otherwise directed by the Commission, within seven calendar

days, a responding party shall file with the Commission and serve on the propounding party any opposition and objections to interrogatories. The grounds for objecting to an interrogatory must be stated with specificity. Unless otherwise directed by the Commission, any interrogatories to which no opposition or objection is raised shall be answered within 20 calendar days.

(d) Commission staff shall rule in writing on the scope of, and schedule for answering, any disputed interrogatories based upon the justification for the interrogatories properly filed and served pursuant to paragraph (a) of this section, and any objections or oppositions thereto, properly filed and served pursuant to paragraph (c) of this section.

(e) Interrogatories shall be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them, and the attorney who objects must sign any objections. The answers shall be filed with the Commission and served on the propounding party.

(f) The Commission, in its discretion, may allow additional discovery, including, but not limited to, document production and/or depositions, and it may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that:

(1) Indexes the documents by useful identifying information; and

(2) Allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) A propounding party asserting that a responding party has provided an inadequate or insufficient response to a discovery request may file a motion to compel within ten days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of § 1.729.

[83 FR 44832, Sept. 4, 2018]

§ 1.731 Confidentiality of information produced or exchanged.

(a) Any information produced in the course of a formal complaint proceeding may be designated as confidential by either party to the proceeding or a third party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9), and under § 0.459 of this chapter. Any party asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a confidential designation is claimed. The party claiming confidentiality should restrict its designations to encompass only the specific information that it asserts is confidential. If a confidential designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the materials designated as confidential fall under the standards for nondisclosure enunciated in the FOIA and that the designation is narrowly tailored to encompass only confidential information.

(2) File with the Commission, using the Commission's Electronic Comment Filing System, a public version of the materials that redacts any confidential information and clearly marks each page of the redacted public version with a header stating ''Public Version.'' The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(3) File with the Secretary's Office an unredacted hard copy version of the materials that contains the confidential information and clearly marks each page of the unredacted confidential version with a header stating ''Confidential Version.'' The

unredacted version must be filed on the same day as the redacted version.

(4) Serve one hard copy of the filed unredacted materials and one hard copy of the filed redacted materials on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of §§ 1.47(g) and 1.734(f).

(b) An attorney of record for a party or a party that receives unredacted materials marked as confidential may disclose such materials solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Support personnel for counsel of record representing the parties in the complaint action;

(2) Officers or employees of the receiving party who are directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties; and

(4) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) The individuals identified in paragraph (b) of this section shall not disclose information designated as confidential to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each such individual who is provided access to the information shall sign a declaration or affidavit stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(d) Parties may make copies of materials marked confidential solely for use by the Commission or persons designated in paragraph (b) of this section. Each party shall maintain a log recording the number of copies made of all confidential material and the persons to whom the copies have been provided.

(e) The Commission may adopt a protective order with further restrictions as appropriate.

(f) Upon termination of a formal complaint proceeding, including all appeals and petitions, the parties shall ensure that all originals and reproductions of any confidential materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the confidential materials of an opposing or third party shall be destroyed.

[83 FR 44832, Sept. 4, 2018]

§ 1.732 Other required written submissions.

(a) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence and presenting relevant legal authority and analysis. The Commission may limit the scope of any briefs to certain subjects or issues. Unless otherwise directed by the Commission, all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, or any other pleading submitted in the proceeding.

(b) Claims and defenses previously made but not reflected in the briefs will be deemed abandoned.

(c) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding.

[83 FR 44832, Sept. 4, 2018]

§ 1.733 Status conference.

(a) In any complaint proceeding, the Commission may, in its discretion, direct the attorneys and/or the parties to appear before it for a status conference. A status conference may include discussion of:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of additional pleadings or evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of all or some of the matters in controversy by agreement of the parties;

(5) Whether discovery is necessary and, if so, the scope, type, and schedule for such discovery;

(6) The schedule for the remainder of the case and the dates for any further status conferences; and

(7) Such other matters that may aid in the disposition of the complaint.

(b)(1) Parties shall meet and confer prior to the initial status conference to discuss:

(i) Settlement prospects;

(ii) Discovery;

(iii) Issues in dispute;

(iv) Schedules for pleadings;

(v) Joint statement of stipulated facts, disputed facts, and key legal issues; and

(2) Parties shall submit a joint statement of all proposals agreed to and disputes remaining as a result of such meeting to Commission staff on a date specified by the Commission.

(c) In addition to the initial status conference referenced in paragraph (a) of this section, any party may also request that a conference be held at any time after the complaint has been filed.

(d) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of matters relevant to the conduct of a formal complaint proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials.

(e) Status conferences will be scheduled by the Commission staff at such time and place as it may designate to be conducted in person or by telephone conference call.

(f) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver by that party and will not preclude the Commission staff from conferring with those parties or counsel present.

[83 FR 44832, Sept. 4, 2018]

§ 1.734 Fee remittance; electronic filing; copies; service; separate filings against multiple defendants.

(a) Complaints may not be brought against multiple defendants unless they are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall remit separately the correct fee electronically, in accordance with part 1, subpart G (see § 1.1106 of this chapter) and shall file an original copy of the complaint using the Commission's Electronic Comment Filing System. If a complaint is addressed against multiple defendants, the complainant shall pay a separate fee for each additional defendant.

(c) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(d) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by email, to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall additionally send by email, to all parties, a schedule detailing the date the answer and any other applicable pleading will be due and the date, time, and location of the initial status conference.

(e) Parties shall provide hard copies of all submissions to staff in the Enforcement Bureau upon request.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be filed using the Commission's Electronic Comment Filing System, excluding confidential material as set forth in § 1.731. In addition, all pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be served by the filing party on the attorney of record for

each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of §1.47(g). Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service; or

(3) Service by email that is fully transmitted to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by email that is fully transmitted to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day.

(g) Supplemental complaints filed pursuant to §1.723 shall conform to the requirements set forth in this section, except that the complainant need not submit a filing fee.

[83 FR 44832, Sept. 4, 2018, as amended at 84 FR 8618, Mar. 11, 2019]

§1.735 Conduct of proceedings.

(a) The Commission may issue such orders and conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice.

(b) The Commission may decide each complaint upon the filings and information before it, may request additional information from the parties, and may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute.

[83 FR 44832, Sept. 4, 2018]

§1.736 Accelerated Docket Proceedings.

(a) With the exception of complaint proceedings under 47 U.S.C. 255, 617, and 619, and part 14 of this chapter, parties to a formal complaint proceeding against a common carrier, or a pole attachment complaint proceeding against a cable television system operator, a utility, or a telecommunications carrier, may request inclusion on the Accelerated Docket. Proceedings on the Accelerated Docket must be concluded within 60 days, and are therefore subject to shorter pleading deadlines and other modifications to the procedural rules that govern formal complaint proceedings.

(b) A complainant that seeks inclusion of a proceeding on the Accelerated Docket shall submit a request to the Chief of the Enforcement Bureau's Market Disputes Resolution Division, by phone and in writing, prior to filing the complaint.

(c) Within five days of receiving service of any formal complaint against a common carrier, or a pole attachment complaint against a cable television system operator, a utility, or a telecommunications carrier, a defendant may submit a request seeking inclusion of the proceeding on the Accelerated Docket to the Chief of the Enforcement Bureau's Market Disputes Resolution Division. The defendant shall submit such request by phone and in writing, and contemporaneously transmit a copy of the written request to all parties to the proceeding.

(d) Commission staff has discretion to decide whether a complaint, or portion of a complaint, is suitable for inclusion on the Accelerated Docket.

(e) In appropriate cases, Commission staff may require that the parties participate in pre-filing settlement negotiations or mediation under §1.737.

(f) If the parties do not resolve their dispute and the matter is accepted for handling on the Accelerated Docket, staff will establish the schedule and process for the proceeding.

(g) If it appears at any time that a proceeding on the Accelerated Docket is no longer appropriate for such treatment, Commission staff may remove

the matter from the Accelerated Docket either on its own motion or at the request of any party.

(h) In Accelerated Docket proceedings, the Commission may conduct a minitrial, or a trial-type hearing, as an alternative to deciding a case on a written record. Minitrials shall take place no later than between 40 and 45 days after the filing of the complaint. A Commission Administrative Law Judge (''ALJ'') or staff may preside at the minitrial.

(i) Applications for review of staff decisions issued on delegated authority in Accelerated Docket proceedings shall comply with the filing and service requirements in §1.115(e)(4). In Accelerated Docket proceedings which raise issues that may not be decided on delegated authority (see 47 U.S.C. 155(c)(1); 47 CFR 0.331(c)), the staff decision will be a recommended decision subject to adoption or modification by the Commission. Any party to the proceeding that seeks modification of the recommended decision shall do so by filing comments challenging the decision within 15 days of its release. Opposition comments, shall be filed within 15 days of the comments challenging the decision; reply comments shall may be filed 10 days thereafter and shall be limited to issues raised in the opposition comments.

(j) If no party files comments challenging the recommended decision, the Commission will issue its decision adopting or modifying the recommended decision within 45 days of its release. If parties to the proceeding file comments to the recommended decision, the Commission will issue its decision adopting or modifying the recommended decision within 30 days of the filing of the final comments.

[83 FR 44832, Sept. 4, 2018]

§1.737 Mediation.

(a) The Commission encourages parties to attempt to settle or narrow their disputes. To that end, staff in the Enforcement Bureau's Market Disputes Resolution Division are available to conduct mediations. Staff will determine whether a matter is appropriate for mediation. Participation in mediation is generally voluntary, but may be required as a condition for including a matter on the Accelerated Docket.

(b) Parties may request mediation of a dispute before the filing of a complaint. After a complaint has been filed, parties may request mediation as long as a proceeding is pending before the Commission.

(c) Parties may request mediation by: Calling the Chief of the Enforcement Bureau's Market Disputes Resolution Division; submitting a written request in a letter addressed to the Chief of the Market Disputes Resolution Division; or including a mediation request in any pleading in a formal complaint proceeding, or an informal complaint proceeding under §1.717. Any party requesting mediation must verify that it has attempted to contact all other parties to determine whether they are amenable to mediation, and shall state the response of each party, if any.

(d) Staff will schedule the mediation in consultation with the parties. Staff may request written statements and other information from the parties to assist in the mediation.

(e) In any proceeding to which no statutory deadline applies, staff may, in its discretion, hold a case in abeyance pending mediation.

(f) The parties and Commission staff shall keep confidential all written and oral communications prepared or made for purposes of the mediation, including mediation submissions, offers of compromise, and staff and party comments made during the course of the mediation (Mediation Communications). Neither staff nor the parties may use, disclose or seek to disclose Mediation Communications in any proceeding before the Commission (including an arbitration or a formal complaint proceeding involving the instant dispute) or before any other tribunal, unless compelled to do so by law. Documents and information that are otherwise discoverable do not become Mediation Communications merely because they are disclosed or discussed during the mediation. Unless otherwise directed by Commission staff, the existence of the mediation will not be treated as confidential. A party may request that the existence of the mediation be treated as confidential in a case where

this fact has not previously been publicly disclosed, and staff may grant such a request for good cause shown.

(g) Any party or Commission staff may terminate a mediation by notifying other participants of their decision to terminate. Staff shall promptly confirm in writing that the mediation has ended. The confidentiality rules in paragraph (f) of this section shall continue to apply to any Mediation Communications. Further, unless otherwise directed, any staff ruling requiring that the existence of the mediation be treated as confidential will continue to apply after the mediation has ended.

(h) For disputes arising under 47 U.S.C. 255, 617, and 619, and the advanced communications services and equipment rules, parties shall submit the Request for Dispute Assistance in accordance with § 14.32 of this chapter.

[83 FR 44837, Sept. 4, 2018]

§ 1.738 Complaints filed pursuant to 47 U.S.C. 271(d)(6)(B).

(a) Where a complaint is filed pursuant to 47 U.S.C. 271(d)(6)(B), parties shall indicate whether they are willing to waive the 90 day resolution deadline contained in 47 U.S.C. 271(d)(6)(B) in the following manner:

(1) The complainant shall so indicate in both the complaint itself and in the Formal Complaint Intake Form, and the defendant shall so indicate in its answer; or

(2) The parties shall indicate their agreement to waive the 90 day resolution deadline to the Commission staff at the initial status conference, to be held in accordance with § 1.733.

(b) Requests for waiver of the 90 day resolution deadline for complaints filed pursuant to 47 U.S.C. 271(d)(6)(B) will not be entertained by the Commission staff subsequent to the initial status conference, absent a showing by the complainant and defendant that such waiver is in the public interest.

[83 FR 44837, Sept. 4, 2018]

§ 1.739 Primary jurisdiction referrals.

(a) Any party to a case involving claims under the Act that has been referred to the Commission by a court pursuant to the primary jurisdiction doctrine must contact the Market Disputes Resolution Division of the Enforcement Bureau for guidance before filing any pleadings or otherwise proceeding before the Commission.

(b) Based upon an assessment of the procedural history and the nature of the issues involved, the Market Disputes Resolution Division will determine the procedural means by which the Commission will handle the primary jurisdiction referral.

(c) Failure to contact the Market Disputes Resolution Division prior to filing any pleadings or otherwise proceeding before the Commission, or failure to abide by the Division's determinations regarding the referral, may result in dismissal.

[83 FR 44837, Sept. 4, 2018]

§ 1.740 Review period for section 208 formal complaints not governed by section 208(b)(1) of the Act.

(a) Except in extraordinary circumstances, final action on a formal complaint filed pursuant to section 208 of the Act, and not governed by section 208(b)(1), should be expected no later than 270 days from the date the complaint is filed with the Commission.

(b) The Enforcement Bureau shall have the discretion to pause the 270-day review period in situations where actions outside the Commission's control are responsible for unreasonably delaying Commission review of a complaint referenced in paragraph (a) of this section.

[83 FR 44837, Sept. 4, 2018]

APPLICATIONS

§ 1.741 Scope.

The general rules relating to applications contained in §§ 1.742 through 1.748 apply to all applications filed by carriers except those filed by public correspondence radio stations pursuant to parts 80, 87, and 101 of this chapter, and those filed by common carriers pursuant to part 25 of this chapter. Parts 21 and 101 of this chapter contain general rules applicable to applications filed pursuant to these parts. For general rules applicable to applications filed pursuant to parts 80 and 87 of this chapter, see such parts and subpart F

of this part. For rules applicable to applications filed pursuant to part 25, see said part.

[61 FR 26670, May 28, 1996]

§ 1.742 Place of filing, fees, and number of copies.

All applications which do not require a fee shall be filed electronically through the Commission's Electronic Comment Filing System if practicable. Applications which must be filed in hard copy format should be submitted according to the procedures set forth on the web page of the FCC's Office of the Secretary, *https://www.fcc.gov/secretary*. Hand-delivered applications will be dated by the Secretary upon receipt (mailed applications will be dated by the Mail Branch) and then forwarded to the Wireline Competition Bureau. All applications accompanied by a fee payment should be filed in accordance with §1.1105, Schedule of charges for applications and other filings for the wireline competition services.

[83 FR 2556, Jan. 18, 2018]

§ 1.743 Who may sign applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments thereto, and related statements of fact required by the Commission must be signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer or duly authorized employee, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of eligible government entities such as states and territories of the United States, their political subdivisions, the District of Columbia, and units of local government, including incorporated municipalities, must be signed by a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

(c) Only the original of applications, amendments, or related statements of fact need be signed; copies may be conformed.

(d) Applications, amendments, and related statements of fact need not be signed under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, U.S. Code, Title 18, section 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to section 312(a)(1) of the Communications Act of 1934, as amended.

(e) ''Signed,'' as used in this section, means an original hand-written signature, except that by public notice in the FEDERAL REGISTER the Wireline Competition Bureau may allow signature by any symbol executed or adopted by the applicant with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

[28 FR 12450, Nov. 22, 1963, as amended at 53 FR 17193, May 16, 1988; 59 FR 59503, Nov. 17, 1994; 67 FR 13223, Mar. 21, 2002]

§ 1.744 Amendments.

(a) Any application not designated for hearing may be amended at any time by the filing of signed amendments in the same manner, and with the same number of copies, as was the initial application. If a petition to deny (or to designate for hearing) has been filed, the amendment shall be served on the petitioner.

(b) After any application is designated for hearing, requests to amend such application may be granted by the presiding officer upon good cause shown by petition, which petition shall be properly served upon all other parties to the proceeding.

(c) The applicant may at any time be ordered to amend his application so as to make it more definite and certain. Such order may be issued upon motion

of the Commission (or the presiding officer, if the application has been designated for hearing) or upon petition of any interested person, which petition shall be properly served upon the applicant and, if the application has been designated for hearing, upon all parties to the hearing.

[29 FR 6444, May 16, 1964, and 31 FR 14394, Nov. 9, 1966]

§ 1.745 Additional statements.

The applicant may be required to submit such additional documents and written statements of fact, signed and verified (or affirmed), as in the judgment of the Commission (or the presiding officer, if the application has been designated for hearing) may be necessary. Any additional documents and written statements of fact required in connection with applications under Title II of the Communications Act need not be verified (or affirmed).

[29 FR 6444, May 16, 1964]

§ 1.746 Defective applications.

(a) Applications not in accordance with the applicable rules in this chapter may be deemed defective and returned by the Commission without acceptance of such applications for filing and consideration. Such applications will be accepted for filing and consideration if accompanied by petition showing good cause for waiver of the rule with which the application does not conform.

(b) The assignment of a file number, if any, to an application is for the administrative convenience of the Commission and does not indicate the acceptance of the application for filing and consideration.

§ 1.747 Inconsistent or conflicting applications.

When an application is pending or undecided, no inconsistent or conflicting application filed by the same applicant, his successor or assignee, or on behalf or for the benefit of said applicant, his successor, or assignee, will be considered by the Commission.

§ 1.748 Dismissal of applications.

(a) *Before designation for hearing*. Any application not designated for hearing may be dismissed without prejudice at any time upon request of the applicant. An applicant's request for the return of an application that has been accepted for filing and consideration, but not designated for hearing, will be deemed a request for dismissal without prejudice. The Commission may dismiss an application without prejudice before it has been designated for hearing when the applicant fails to comply or justify noncompliance with Commission requests for additional information in connection with such application.

(b) *After designation for hearing*. A request to dismiss an application without prejudice after it has been designated for hearing shall be made by petition properly served upon all parties to the hearing and will be granted only for good cause shown. An application may be dismissed with prejudice after it has been designated for hearing when the applicant:

(1) Fails to comply with the requirements of § 1.221(c);

(2) Otherwise fails to prosecute his application; or

(3) Fails to comply or justify noncompliance with Commission requests for additional information in connection with such application.

[28 FR 12450, Nov. 22, 1963, as amended at 29 FR 6445, May 16, 1964]

§ 1.749 Action on application under delegated authority.

Certain applications do not require action by the Commission but, pursuant to the delegated authority contained in subpart B of part 0 of this chapter, may be acted upon by the Chief of the Wireline Competition Bureau subject to reconsideration by the Commission.

[67 FR 13223, Mar. 21, 2002]

SPECIFIC TYPES OF APPLICATIONS UNDER TITLE II OF COMMUNICATIONS ACT

§ 1.761 Cross reference.

Specific types of applications under Title III of the Communications Act involving public correspondence radio stations are specified in parts 23, 80, 87, and 101 of this chapter.

[61 FR 26671, May 28, 1996]

§ 1.763 Construction, extension, acquisition or operation of lines.

(a) Applications under section 214 of the Communications Act for authority to construct a new line, extend any line, acquire or operate any line or extension thereof, or to engage in transmission over or by means of such additional or extended line, to furnish temporary or emergency service, or to supplement existing facilities shall be made in the form and manner, with the number of copies and accompanied by the fees specified in part 63 of this chapter.

(b) In cases under this section requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. Hearing is held if any of these persons desires to be heard or if the Commission determines that a hearing should be held. Copies of applications for certificates are filed with the regulatory agencies of the States involved.

[28 FR 12450, Nov. 22, 1963, as amended at 64 FR 39939, July 23, 1999]

§ 1.764 Discontinuance, reduction, or impairment of service.

(a) Applications under section 214 of the Communications Act for the authority to discontinue, reduce, or impair service to a community or part of a community or for the temporary, emergency, or partial discontinuance, reduction, or impairment of service shall be made in the form and manner, with the number of copies specified in part 63 of this chapter (see also subpart G, part 1 of this chapter). Posted and public notice shall be given the public as required by part 63 of this chapter.

(b) In cases under this section requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. Hearing is held if any of these persons desires to be heard or if the Commission determines that a hearing should be held. Copies of all formal applications under this section requesting authorizations (including certificates) are filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points) and the Governor of each State involved. Copies of all applications under this section requesting authorizations (including certificates) are filed with the regulatory agencies of the States involved.

[28 FR 12450, Nov. 22, 1963, as amended at 52 FR 5289, Feb. 20, 1987]

§ 1.767 Cable landing licenses.

(a) Applications for cable landing licenses under 47 U.S.C. 34–39 and Executive Order No. 10530, dated May 10, 1954, should be filed in accordance with the provisions of that Executive Order. These applications should contain:

(1) The name, address and telephone number(s) of the applicant;

(2) The Government, State, or Territory under the laws of which each corporate or partnership applicant is organized;

(3) The name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed;

(4) A description of the submarine cable, including the type and number of channels and the capacity thereof;

(5) A specific description of the cable landing stations on the shore of the United States and in foreign countries where the cable will land. The description shall include a map showing specific geographic coordinates, and may also include street addresses, of each landing station. The map must also specify the coordinates of any beach joint where those coordinates differ from the coordinates of the cable station. The applicant initially may file a general geographic description of the landing points; however, grant of the application will be conditioned on the Commission's final approval of a more specific description of the landing points, including all information required by this paragraph, to be filed by the applicant no later than ninety (90) days prior to construction. The Commission will give public notice of the filing of this description, and grant of the license will be considered final if

the Commission does not notify the applicant otherwise in writing no later than sixty (60) days after receipt of the specific description of the landing points, unless the Commission designates a different time period;

(6) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis;

(7) A list of the proposed owners of the cable system, including each U.S. cable landing station, their respective voting and ownership interests in each U.S. cable landing station, their respective voting interests in the wet link portion of the cable system, and their respective ownership interests by segment in the cable;

(8) For each applicant:

(i) The place of organization and the information and certifications required in §§ 63.18(h) and (o) of this chapter;

(ii) A certification as to whether or not the applicant is, or is affiliated with, a foreign carrier, including an entity that owns or controls a cable landing station, in any foreign country. The certification shall state with specificity each such country;

(iii) A certification as to whether or not the applicant seeks to land and operate a submarine cable connecting the United States to any country for which any of the following is true. The certification shall state with specificity the foreign carriers and each country:

(A) The applicant is a foreign carrier in that country; or

(B) The applicant controls a foreign carrier in that country; or

(C) There exists any entity that owns more than 25 percent of the applicant, or controls the applicant, or controls a foreign carrier in that country.

(D) Two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of the applicant and are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of arrangements for the terms of acquisition, sale, lease, transfer and use of capacity on the cable in the United States; and

(iv) For any country that the applicant has listed in response to paragraph (a)(8)(iii) of this section that is not a member of the World Trade Organization, a demonstration as to whether the foreign carrier lacks market power with reference to the criteria in § 63.10(a) of this chapter.

NOTE TO PARAGRAPH (a)(8)(iv): Under § 63.10(a) of this chapter, the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

(9) A certification that the applicant accepts and will abide by the routine conditions specified in paragraph (g) of this section; and

(10) Any other information that may be necessary to enable the Commission to act on the application.

NOTE TO PARAGRAPH (a)(10): Applicants for cable landing licenses may be subject to the consistency certification requirements of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456, if they propose to conduct activities, in or outside of a coastal zone of a state with a federally-approved management plan, affecting any land or water use or natural resource of that state's coastal zone. Before filing their applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system, applicants must determine whether they are required to certify that their proposed activities will comply with the enforceable policies of a coastal state's approved management program. In order to make this determination, applicants should consult National Oceanic Atmospheric Administration (NOAA) regulations, 15 CFR part 930, Subpart D, and review the approved management programs of coastal states in the vicinity of the proposed landing station to verify that this type of application is not a listed federal license activity requiring review. After the application is filed, applicants should follow the procedures specified in 15 CFR 930.54 to determine whether any potentially affected state has sought or received NOAA approval to review the application as an unlisted activity. If it is determined that any certification is required, applicants shall consult the affected coastal state(s) (or designated state agency(ies)) in determining the contents of any required consistency certification(s). Applicants may also consult the Office of Ocean and Coastal Management (OCRM) within NOAA for guidance. The cable landing license application filed with the Commission shall include any consistency certification

required by section 1456(c)(3)(A) for any affected coastal state(s) that lists this type of application in its NOAA-approved coastal management program and shall be updated pursuant to §1.65 of the Commission's rules, 47 CFR 1.65, to include any subsequently required consistency certification with respect to any state that has received NOAA approval to review the application as an unlisted federal license activity. Upon documentation from the applicant—or notification from each coastal state entitled to review the license application for consistency with a federally approved coastal management program—that the state has either concurred, or by its inaction, is conclusively presumed to have concurred with the applicant's consistency certification, the Commission may take action on the application.

(11)(i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (a)(3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) through (a)(9) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The application shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(ii) In the event the transaction requiring an assignment or transfer of control application also requires the filing of a foreign carrier affiliation notification pursuant to §1.768, the applicant shall reference in the application the foreign carrier affiliation notification and the date of its filing. *See* §1.768. *See* also paragraph (g)(7) of this section (providing for post-transaction notification of pro forma assignments and transfers of control).

(iii) An assignee or transferee must notify the Commission no later than thirty (30) days after either consummation of the assignment or transfer or a decision not to consummate the assignment or transfer. The notification shall identify the file numbers under which the initial license and the authorization of the assignment or transfer were granted.

(b) These applications are acted upon by the Commission after obtaining the approval of the Secretary of State and such assistance from any executive department or establishment of the Government as it may require.

(c) Original files relating to submarine cable landing licenses and applications for licenses since June 30, 1934, are kept by the Commission. Such applications for licenses (including all documents and exhibits filed with and made a part thereof, with the exception of any maps showing the exact location of the submarine cable or cables to be licensed) and the licenses issued pursuant thereto, with the exception of such maps, shall, unless otherwise ordered by the Commission, be open to public inspection in the offices of the Commission in Washington, D.C.

(d) Original files relating to licenses and applications for licenses for the landing operation of cables prior to June 30, 1934, were kept by the Department of State, and such files prior to 1930 have been transferred to the Executive and Foreign Affairs Branch of the General Records Office of the National Archives. Requests for inspection of these files should, however, be addressed to the Federal Communications Commission, Washington, D.C., 20554; and the Commission will obtain such files for a temporary period in order to permit inspection at the offices of the Commission.

(e) A separate application shall be filed with respect to each individual cable system for which a license is requested or a modification of the cable system, renewal, or extension of an existing license is requested. Applicants for common carrier cable landing licenses shall also separately file an international section 214 authorization for overseas cable construction.

(f) Applicants shall disclose to any interested member of the public, upon written request, accurate information concerning the location and timing for the construction of a submarine cable system authorized under this section. This disclosure shall be made within 30 days of receipt of the request.

(g) *Routine conditions.* Except as otherwise ordered by the Commission, the following rules apply to each licensee of a cable landing license granted on or after March 15, 2002:

(1) Grant of the cable landing license is subject to:

(i) All rules and regulations of the Federal Communications Commission;

(ii) Any treaties or conventions relating to communications to which the United States is or may hereafter become a party; and

(iii) Any action by the Commission or the Congress of the United States rescinding, changing, modifying or amending any rights accruing to any person by grant of the license;

(2) The location of the cable system within the territorial waters of the United States of America, its territories and possessions, and upon its shores shall be in conformity with plans approved by the Secretary of the Army. The cable shall be moved or shifted by the licensee at its expense upon request of the Secretary of the Army, whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance and improvement of harbors for navigational purposes;

(3) The licensee shall at all times comply with any requirements of United States government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cables from injury or destruction by enemies of the United States of America;

(4) The licensee, or any person or company controlling it, controlled by it, or under direct or indirect common control with it, does not enjoy and shall not acquire any right to handle traffic to or from the United States, its territories or its possessions unless such service is authorized by the Commission pursuant to section 214 of the Communications Act, as amended;

(5)(i) The licensee shall be prohibited from agreeing to accept special concessions directly or indirectly from any foreign carrier, including any entity that owns or controls a foreign cable landing station, where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market, and from agreeing to accept special concessions in the future.

(ii) For purposes of this section, a special concession is defined as an exclusive arrangement involving services, facilities, or functions on the foreign end of a U.S. international route that are necessary to land, connect, or operate submarine cables, where the arrangement is not offered to similarly situated U.S. submarine cable owners, indefeasible-right-of-user holders, or lessors, and includes arrangements for the terms for acquisition, resale, lease, transfer and use of capacity on the cable; access to collocation space; the opportunity to provide or obtain backhaul capacity; access to technical network information; and interconnection to the public switched telecommunications network.

NOTE TO PARAGRAPH (g)(5): Licensees may rely on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points for purposes of determining which foreign carriers are the subject of the requirements of this section. The Commission's list of foreign carriers that do not qualify for the presumption that they lack market power is available from the International Bureau's World Wide Web site at *http://www.fcc.gov/ib*.

(6) Except as provided in paragraph (g)(7) of this section, the cable landing license and rights granted in the license shall not be transferred, assigned, or disposed of, or disposed of indirectly by transfer of control of the licensee, unless the Federal Communications Commission gives prior consent in writing;

(7) A *pro forma* assignee or person or company that is the subject of a *pro forma* transfer of control of a cable landing license is not required to seek prior approval for the *pro forma* transaction. A *pro forma* assignee or person or company that is the subject of a *pro forma* transfer of control must notify the Commission no later than thirty (30) days after the assignment or transfer of control is consummated. The notification must certify that the assignment or transfer of control was *pro forma*, as defined in § 63.24 of this chapter, and, together with all previous *pro forma* transactions, does not result in a

change of the licensee's ultimate control. The licensee may file a single notification for an assignment or transfer of control of multiple licenses issued in the name of the licensee if each license is identified by the file number under which it was granted;

(8) Unless the licensee has notified the Commission in the application of the precise locations at which the cable will land, as required by paragraph (a)(5) of this section, the licensee shall notify the Commission no later than ninety (90) days prior to commencing construction at that landing location. The Commission will give public notice of the filing of each description, and grant of the cable landing license will be considered final with respect to that landing location unless the Commission issues a notice to the contrary no later than sixty (60) days after receipt of the specific description. *See* paragraph (a)(5) of this section;

(9) The Commission reserves the right to require the licensee to file an environmental assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations may significantly affect the environment within the meaning of § 1.1307 implementing the National Environmental Policy Act of 1969. *See* § 1.1307(a) and (b). The cable landing license is subject to modification by the Commission under its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules. *See also* § 1.1306 note 1 and § 1.1307(c) and (d);

(10) The Commission reserves the right, pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, Executive Order No. 10530 as amended, and section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214, to impose common carrier regulation or other regulation consistent with the Cable Landing License Act on the operations of the cable system if it finds that the public interest so requires;

(11) The licensee, or in the case of multiple licensees, the licensees collectively, shall maintain *de jure* and *de facto* control of the U.S. portion of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license;

(12) The licensee shall comply with the requirements of § 1.768;

(13) The licensee shall file annual international circuit capacity reports as required by § 43.82 of this chapter.

(14) The cable landing license is revocable by the Commission after due notice and opportunity for hearing pursuant to section 2 of the Cable Landing License Act, 47 U.S.C. 35, or for failure to comply with the terms of the license or with the Commission's rules; and

(15) The licensee must notify the Commission within thirty (30) days of the date the cable is placed into service. The cable landing license shall expire twenty-five (25) years from the in-service date, unless renewed or extended upon proper application. Upon expiration, all rights granted under the license shall be terminated.

(16) Licensees shall file submarine cable outage reports as required in 47 CFR part 4.

(h) *Applicants/Licensees*. Except as otherwise required by the Commission, the following entities, at a minimum, shall be applicants for, and licensees on, a cable landing license:

(1) Any entity that owns or controls a cable landing station in the United States; and

(2) All other entities owning or controlling a five percent (5%) or greater interest in the cable system and using the U.S. points of the cable system.

(i) *Processing of cable landing license applications*. The Commission will take action upon an application eligible for streamlined processing, as specified in paragraph (k) of this section, within forty-five (45) days after release of the public notice announcing the application as acceptable for filing and eligible for streamlined processing. If the Commission deems an application seeking streamlined processing acceptable for filing but ineligible for streamlined processing, or if an applicant does not seek streamlined processing, the Commission will issue public notice indicating that the application is ineligible for streamlined processing. Within ninety (90) days of the public notice, the Commission will take action upon the application or provide public notice

that, because the application raises questions of extraordinary complexity, an additional 90-day period for review is needed. Each successive 90-day period may be so extended.

(j) *Applications for streamlining*. Each applicant seeking to use the streamlined grant procedure specified in paragraph (i) of this section shall request streamlined processing in its application. Applications for streamlined processing shall include the information and certifications required by paragraph (k) of this section. On the date of filing with the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520–5818; Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230; and Defense Information Systems Agency, ATTN: GC/DO1, 6910 Cooper Avenue, Fort Meade, MD 20755–7088, and shall certify such service on a service list attached to the application or other filing.

(k) *Eligibility for streamlining*. Each applicant must demonstrate eligibility for streamlining by:

(1) Certifying that it is not a foreign carrier and it is not affiliated with a foreign carrier in any of the cable's destination markets;

(2) Demonstrating pursuant to § 63.12(c)(1)(i) through (iii) of this chapter that any such foreign carrier or affiliated foreign carrier lacks market power; or

(3) Certifying that the destination market where the applicant is, or has an affiliation with, a foreign carrier is a World Trade Organization (WTO) Member and the applicant agrees to accept and abide by the reporting requirements set out in paragraph (l) of this section. An application that includes an applicant that is, or is affiliated with, a carrier with market power in a cable's non-WTO Member destination country is not eligible for streamlining.

(4) Certifying that for applications for a license to construct and operate a submarine cable system or to modify the construction of a previously approved submarine cable system the applicant is not required to submit a consistency certification to any state pursuant to section 1456(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456.

NOTE TO PARAGRAPH (k)(4): Streamlining of cable landing license applications will be limited to those applications where all potentially affected states, having constructive notice that the application was filed with the Commission, have waived, or are deemed to have waived, any section 1456(c)(3)(A) right to review the application within the thirty-day period prescribed by 15 CFR 930.54.

(l) *Reporting Requirements Applicable to Licensees Affiliated with a Carrier with Market Power in a Cable's WTO Destination Market*. Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's WTO Member destination countries, and that requests streamlined processing of an application under paragraphs (j) and (k) of this section, must comply with the following requirements:

(1) File quarterly reports summarizing the provisioning and maintenance of all network facilities and services procured from the licensee's affiliate in that destination market, within ninety (90) days from the end of each calendar quarter. These reports shall contain the following:

(i) The types of facilities and services provided (for example, a lease of wet link capacity in the cable, collocation of licensee's equipment in the cable station with the ability to provide backhaul, or cable station and backhaul services provided to the licensee);

(ii) For provisioned facilities and services, the volume or quantity provisioned, and the time interval between order and delivery; and

(iii) The number of outages and intervals between fault report and facility or service restoration; and

(2) File quarterly, within 90 days from the end of each calendar quarter, a report of its active and idle 64 kbps or equivalent circuits by facility (terrestrial, satellite and submarine cable).

(m) (1) Except as specified in paragraph (m)(2) of this section, amendments to pending applications, and applications to modify a license, including amendments or applications to add a new applicant or licensee, shall be signed by each initial applicant or licensee, respectively. Joint applicants or licensees may appoint one party to act as proxy for purposes of complying with this requirement.

(2) Any licensee that seeks to relinquish its interest in a cable landing license shall file an application to modify the license. Such application must include a demonstration that the applicant is not required to be a licensee under paragraph (h) of this section and that the remaining licensee(s) will retain collectively *de jure* and *de facto* control of the U.S. portion of the cable system sufficient to comply with the requirements of the Commission's rules and any specific conditions of the license, and must be served on each other licensee of the cable system.

(n)(1) With the exception of submarine cable outage reports, and subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Bureau Filing System (IBFS). A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, subpart Y, and the IBFS homepage at *http://www.fcc.gov/ibfs*. See also sections 63.20 and 63.53 of this chapter.

(2) Submarine cable outage reports must be filed as set forth in part 4 of this Title.

(o) *Outage Reporting*. Licensees of a cable landing license granted prior to March 15, 2002 shall file submarine cable outage reports as required in part 4 of this Title.

NOTE TO §1.767: The terms ''affiliated'' and ''foreign carrier,'' as used in this section, are defined as in §63.09 of this chapter except that the term ''foreign carrier'' also shall include any entity that owns or controls a cable landing station in a foreign market. The term ''country'' as used in this section refers to the foreign points identified in the U.S. Department of State list of Independent States of the World and its list of Dependencies and Areas of Special Sovereignty. *See http://www.state.gov*.

[28 FR 12450, Nov. 22, 1963, as amended at 52 FR 5289, Feb. 20, 1987; 61 FR 15726, Apr. 9, 1996; 64 FR 19061, Apr. 19, 1999; 65 FR 51769, Aug. 25, 2000; 65 FR 54799, Sept. 11, 2000; 67 FR 1619, Jan. 14, 2002; 69 FR 40327, July 2, 2004; 70 FR 38796, July 6, 2005; 72 FR 54366, Sept. 25, 2007; 75 FR 81490, Dec. 28, 2010; 76 FR 32867, June 7, 2011; 78 FR 15623, Mar. 12, 2013; 79 FR 31876, June 3, 2014; 81 FR 52362, Aug. 8, 2016; 82 FR 55331, Nov. 21, 2017; 86 FR 15061, Mar. 19, 2021]

EFFECTIVE DATE NOTES: 1. At 81 FR 52362, Aug. 8, 2016, §1.767 was amended by adding paragraph (g)(15), revising paragraph (n), and adding paragraph (o). These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 85 FR 76382, Nov. 27, 2020, §1.767 was amended by revising paragraphs (a)(8)(i), (a)(11)(i), and (j), adding paragraph (k)(5), and revising the introductory text of paragraph (l). This action was delayed indefinitely. For the convenience of the user, the added and revised text is set forth as follows:

§ 1.767 Cable landing licenses.

(a) * * * *

(8) * * *

(i) The place of organization and the information and certifications required in §63.18(h), (o), (p), and (q) of this chapter.

* * * * *

(11)(i) If applying for authority to assign or transfer control of an interest in a cable system, the applicant shall complete paragraphs (a)(1) through (3) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (a)(8) and (9) of this section. The applicant shall include both the pre-transaction and post-transaction ownership diagram of the licensee as required under paragraph (a)(8)(i) of this section. The applicant shall also include a narrative describing the means by which the transfer or assignment will take place. The applicant shall also specify, on a segment specific basis, the percentage of voting and ownership interests being transferred or assigned in the cable system, including in a U.S. cable landing station. The Commission reserves the right to request additional information concerning the transaction to aid it in making its public interest determination.

* * * * *

(j) *Submission of application to executive branch agencies*. On the date of filing with

the Commission, the applicant shall also send a complete copy of the application, or any major amendments or other material filings regarding the application, to: U.S. Coordinator, EB/CIP, U.S. Department of State, 2201 C Street NW, Washington, DC 20520–5818; Office of Chief Counsel/NTIA, U.S. Department of Commerce, 14th St. and Constitution Ave. NW, Washington, DC 20230; and Defense Information Systems Agency, ATTN: GC/DO1, 6910 Cooper Avenue, Fort Meade, MD 20755–7088, and shall certify such service on a service list attached to the application or other filing.

(k) * * *

(5) Certifying that all ten percent or greater direct or indirect equity and/or voting interests, or a controlling interest, in the applicant are U.S. citizens or entities organized in the United States.

(l) *Reporting requirements applicable to licensees affiliated with a carrier with market power in a cable's destination market.* Any licensee that is, or is affiliated with, a carrier with market power in any of the cable's destination countries must comply with the following requirements:

* * * * *

§ 1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

Any entity that is licensed by the Commission (''licensee'') to land or operate a submarine cable landing in a particular foreign destination market that becomes, or seeks to become, affiliated with a foreign carrier that is authorized to operate in that market, including an entity that owns or controls a cable landing station in that market, shall notify the Commission of that affiliation.

(a) *Affiliations requiring prior notification:* Except as provided in paragraph (b) of this section, the licensee must notify the Commission, pursuant to this section, forty-five (45) days before consummation of either of the following types of transactions:

(1) Acquisition by the licensee, or by any entity that controls the licensee, or by any entity that directly or indirectly owns more than twenty-five percent (25%) of the capital stock of the licensee, of a controlling interest in a foreign carrier that is authorized to operate in a market where the cable lands; or

(2) Acquisition of a direct or indirect interest greater than twenty-five percent (25%), or of a controlling interest, in the capital stock of the licensee by a foreign carrier that is authorized to operate in a market where the cable lands, or by an entity that controls such a foreign carrier.

(b) *Exceptions:* (1) Notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead by filed pursuant to paragraph (c) of this section, if either of the following is true with respect to the named foreign carrier, regardless of whether the destination market where the cable lands is a World Trade Organization (WTO) or non-WTO Member:

(i) The Commission has previously determined in an adjudication that the foreign carrier lacks market power in that destination market (for example, in an international section 214 application or a declaratory ruling proceeding); or

(ii) The foreign carrier owns no facilities in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in a cable landing station or in bare capacity in international or domestic telecommunications facilities (excluding switches).

(2) In the event paragraph (b)(1) of this section cannot be satisfied, notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if the licensee certifies that the destination market where the cable lands is a WTO Member and provides certification to satisfy either of the following:

(i) The licensee demonstrates that its foreign carrier affiliate lacks market power in the cable's destination market pursuant to § 63.10(a)(3) of this chapter (*see* § 63.10(a)(3) of this chapter); or

(ii) The licensee agrees to comply with the reporting requirements contained in § 1.767(l) effective upon the acquisition of the affiliation. *See* § 1.767(l).

(c) *Notification after consummation:* Any licensee that becomes affiliated

with a foreign carrier and has not previously notified the Commission pursuant to the requirements of this section shall notify the Commission within thirty (30) days after consummation of the acquisition.

Example 1 to paragraph (c). Acquisition by a licensee (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the licensee) of a direct or indirect interest in a foreign carrier that is greater than twenty-five percent (25%) but not controlling is subject to paragraph (c) of this section but not to paragraph (a) of this section.

Example 2 to paragraph (c). Notification of an acquisition by a licensee of a hundred percent (100%) interest in a foreign carrier may be made after consummation, pursuant to paragraph (c) of this section, if the foreign carrier operates only as a resale carrier.

Example 3 to paragraph (c). Notification of an acquisition by a foreign carrier from a WTO Member of a greater than twenty-five percent (25%) interest in the capital stock of the licensee may be made after consummation, pursuant to paragraph (c) of this section, if the licensee demonstrates in the post-notification that the foreign carrier lacks market power in the cable's destination market or the licensee agrees to comply with the reporting requirements contained in §1.767(l) effective upon the acquisition of the affiliation.

(d) *Cross-reference:* In the event a transaction requiring a foreign carrier notification pursuant to this section also requires a transfer of control or assignment application pursuant to the requirements of the license granted under §1.767 or §1.767(g), the foreign carrier notification shall reference in the notification the transfer of control or assignment application and the date of its filing. *See* §1.767(g).

(e) *Contents of notification:* The notification shall certify the following information:

(1) The name of the newly affiliated foreign carrier and the country or countries at the foreign end of the cable in which it is authorized to provide telecommunications services to the public or where it owns or controls a cable landing station;

(2) Which, if any, of those countries is a Member of the World Trade Organization;

(3) The name of the cable system that is the subject of the notification, and the FCC file number(s) under which the license was granted;

(4) The name, address, citizenship, and principal business of any person or entity that directly or indirectly owns at least ten percent (10%) of the equity of the licensee, and the percentage of equity owned by each of those entities (to the nearest one percent (1%));

(5) Interlocking directorates. The name of any interlocking directorates, as defined in §63.09(g) of this chapter, with each foreign carrier named in the notification. *See* §63.09(g) of this chapter.

(6) With respect to each foreign carrier named in the notification, a statement as to whether the notification is subject to paragraph (a) or (c) of this section. In the case of a notification subject to paragraph (a) of this section, the licensee shall include the projected date of closing. In the case of a notification subject to paragraph (c) of this section, the licensee shall include the actual date of closing.

(7) If a licensee relies on an exception in paragraph (b) of this section, then a certification as to which exception the foreign carrier satisfies and a citation to any adjudication upon which the licensee is relying. Licensees relying upon the exceptions in paragraph (b)(2) of this section must make the required certified demonstration in paragraph (b)(2)(i) of this section or the certified commitment to comply with the reporting requirements in paragraph (b)(2)(ii) of this section in the notification required by paragraph (c) of this section.

(f) If the licensee seeks to be excepted from the reporting requirements contained in §1.767(l), the licensee should demonstrate that each foreign carrier affiliate named in the notification lacks market power pursuant to §63.10(a)(3) of this chapter. *See* §63.10(a)(3) of this chapter.

(g) *Procedure.* After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within fourteen (14) days of the public notice.

(1) If the Commission deems it necessary at any time before or after the

deadline for submission of public comments, the Commission may impose reporting requirements on the licensee based on the provisions of § 1.767(l). *See* § 1.767(l).

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section, the authorized U.S. licensee must demonstrate that it continues to serve the public interest for it to retain its interest in the cable landing license for that segment of the cable that lands in the non-WTO destination market. Such a showing shall include a demonstration as to whether the foreign carrier lacks market power in the non-WTO destination market with reference to the criteria in § 63.10(a) of this chapter. In addition, upon request of the Commission, the licensee shall provide the information specified in § 1.767(a)(8). If the licensee is unable to make the required showing or is notified by the Commission that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules under 47 U.S.C. 34 through 39 and Executive Order No. 10530, dated May 10, 1954, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing.

NOTE TO PARAGRAPH (g)(2): Under § 63.10(a) of this chapter, the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

(h) All licensees are responsible for the continuing accuracy of information provided pursuant to this section for a period of forty-five (45) days after filing. During this period if the information furnished is no longer accurate, the licensee shall as promptly as possible, and in any event within ten (10) days, unless good cause is shown, file with the Commission a corrected notification referencing the FCC file numbers under which the original notification was provided.

(i) A licensee that files a prior notification pursuant to paragraph (a) of this section may request confidential treatment of its filing, pursuant to § 0.459 of this chapter, for the first twenty (20) days after filing.

(j) Subject to the availability of electronic forms, all notifications described in this section must be filed electronically through the International Bureau Filing System (IBFS). A list of forms that are available for electronic filing can be found on the IBFS homepage. For information on electronic filing requirements, see part 1, §§ 1.1000 through 1.10018 and the IBFS homepage at *http://www.fcc.gov/ibfs*. See also §§ 63.20 and 63.53.

NOTE TO § 1.768: The terms ''affiliated'' and ''foreign carrier,'' as used in this section, are defined as in § 63.09 of this chapter except that the term ''foreign carrier'' also shall include an entity that owns or controls a cable landing station in a foreign market.

[67 FR 1622, Jan. 14, 2002, as amended at 70 FR 38797, July 6, 2005; 79 FR 31877, June 3, 2014]

TARIFFS

§ 1.771 Filing.

Schedules of charges, and classifications, practices, and regulations affecting such charges, required under section 203 of the Communications Act shall be constructed, filed, and posted in accordance with and subject to the requirements of part 61 of this chapter.

§ 1.772 Application for special tariff permission.

Applications under section 203 of the Communications Act for special tariff permission shall be made in the form and manner, with the number of copies set out in part 61 of this chapter.

[52 FR 5289, Feb. 20, 1987]

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) *Petition*—(1) *Content.* Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision thereof shall specify the filing's Federal Communications Commission tariff number and carrier transmittal number, the items against which protest is made, and the specific reasons why the protested tariff filing warrants investigation, suspension, or rejection under the

Communications Act. No petition shall include a prayer that it also be considered a formal complaint. Any formal complaint shall be filed as a separate pleading as provided in § 1.721.

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision of such a publication, must specify the pertinent Federal Communications Commission tariff number and carrier transmittal number; the matters protested; and the specific reasons why the tariff warrants investigation, suspension, or rejection. When a single petition asks for more than one form of relief, it must separately and distinctly plead and support each form of relief. However, no petition may ask that it also be considered a formal complaint. Formal complaints must be separately lodged, as provided in § 1.721.

(ii) For purposes of this section, tariff filings by nondominant carriers will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition requesting suspension shows:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That the harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(iii) For the purpose of this section, any tariff filing by a local exchange carrier filed pursuant to the requirements of § 61.39 will be considered prima facie lawful and will not be suspended by the Commission unless the petition requesting suspension shows that the cost and demand studies or average schedule information was not provided upon reasonable request. If such a showing is not made, then the filing will be considered prima facie lawful and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That any unreasonable rate would not be corrected in a subsequent filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(iv) For the purposes of this section, tariff filings made pursuant to § 61.49(b) by carriers subject to price cap regulation will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition shows that the support information required in § 61.49(b) was not provided, or unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That the suspension would not substantially harm other interested parties;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(v) For the purposes of this section, any tariff filing by a price cap LEC filed pursuant to the requirements of § 61.42(d)(4)(ii) of this chapter will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That any unreasonable rate would not be corrected in a subsequent filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(2) *When filed.* All petitions seeking investigation, suspension, or rejection of a new or revised tariff filing shall meet the filing requirements of this paragraph. In case of emergency and

within the time limits provided, a telegraphic request for such relief may be sent to the Commission setting forth succinctly the substance of the matters required by paragraph (a)(1) of this section. A copy of any such telegraphic request shall be sent simultaneously to the Chief, Wireline Competition Bureau, the Chief, Pricing Policy Division, and the publishing carrier. Thereafter, the request shall be confirmed by petition filed and served in accordance with § 1.773(a)(4).

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filed pursuant to section 204(a)(3) of the Communications Act made on 7 days notice shall be filed and served within 3 calendar days after the date of the tariff filing.

(ii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 6 days after the date of the tariff filing.

(iii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 7 days after the date of the tariff filing.

(iv) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 15 days after the date of the tariff filing.

(v) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing mode on 90 or more days notice shall be filed and served within 25 days after the date of the tariff filing.

(3) *Computation of time.* Intermediate holidays shall be counted in determining the above filing dates. If the date for filing the petition falls on a holiday, the petition shall be filed on the next succeeding business day.

(4) *Copies, service.* An original and four copies of each petition shall be filed with the Commission as follows: the original and three copies of each petition shall be filed with the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). Additional, separate copies shall be served simultaneously upon the Chief, Wireline Competition Bureau; and the Chief, Pricing Policy Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served either personally or via facsimile on the filing carrier. If a petition is served via facsimile, a copy of the petition must also be sent to the filing carrier via first class mail on the same day of the facsimile transmission. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on more than 15 days notice may be served on the filing carrier by mail.

(b) *Reply*—(1) *When filed.* A publishing carrier's reply to a petition for relief from a tariff filing shall be filed in accordance with the following periods:

(i) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filed pursuant to section 204(a)(3) of the Act made on 7 days notice shall be filed and served within 2 days after the date the petition is filed with the Commission.

(ii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 3 days after the date the petition is due to be filed with the Commission.

(iii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 4 days after service of the petition.

(iv) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 5 days after service of the petition.

(v) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 90 or more days notice shall be filed and served within 8 days after service of the petition.

(vi) Where all petitions against a tariff filing have not been filed on the same day, the publishing carrier may file a consolidated reply to all the petitions. The time for filing such a consolidated reply will begin to run on the last date for timely filed petitions, as

fixed by paragraphs (a)(2) (i) through (iv) of this section, and the date on which the consolidated reply is due will be governed by paragraphs (b)(1) (i) through (iv) of this section.

(2) *Computation of time.* Intermediate holidays shall be counted in determining the 3-day filing date for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice. Intermediate holidays shall not be counted in determining filing dates for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice. When a petition is permitted to be served upon the filing carrier by mail, an additional 3 days (counting holidays) may be allowed for filing the reply. If the date for filing the reply falls on a holiday, the reply may be filed on the next succeeding business day.

(3) *Copies, service.* An original and four copies of each reply shall be filed with the Commission as follows: the original and three copies must be filed with the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). Additional separate copies shall be served simultaneously upon the Chief, Wireline Competition Bureau, the Chief, Pricing Policy Division and the petitioner. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served on petitioners personally or via facsimile. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on more than 15 days notice may be served upon petitioner personally, by mail or via facsimile.

[45 FR 64190, Sept. 29, 1980, as amended at 49 FR 40876, Oct. 18, 1984; 49 FR 49466, Dec. 20, 1984; 52 FR 26682, July 16, 1987; 54 FR 19840, May 8, 1989; 58 FR 17529, Apr. 5, 1993; 58 FR 51247, Oct. 1, 1993; 62 FR 5777, Feb. 7, 1997; 64 FR 51264, Sept. 22, 1999; 65 FR 58466, Sept. 29, 2000; 67 FR 13223, Mar. 21, 2002; 71 FR 15618, Mar. 29, 2006; 74 FR 68544, Dec. 28, 2009; 85 FR 64405, Oct. 13, 2020]

§ 1.774 [Reserved]

§ 1.776 Pricing flexibility limited grandfathering.

Special access contract-based tariffs that were in effect on or before August 1, 2017 are grandfathered. Such contract-based tariffs may not be extended, renewed or revised, except that any extension or renewal expressly provided for by the contract-based tariff may be exercised pursuant to the terms thereof. During the period between August 1, 2017 and the deadline to institute mandatory detariffing under § 61.201(b), upon mutual agreement, parties to a grandfathered contract-based tariff may replace it at any time with a new contract-based tariff or with a new or amended contract that is not filed as a contract-based tariff.

[82 FR 25711, June 2, 2017]

EFFECTIVE DATE NOTE: At 82 FR 25711, June 2, 2017, § 1.776 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

CONTRACTS, REPORTS, AND REQUESTS REQUIRED TO BE FILED BY CARRIERS

§ 1.781 Requests for extension of filing time.

Requests for extension of time within which to file contracts, reports, and requests referred to in §§ 1.783 through 1.814 shall be made in writing and may be granted for good cause shown.

CONTRACTS

§ 1.783 Filing.

Copies of carrier contracts, agreements, concessions, licenses, authorizations or other arrangements, shall be filed as required by part 43 of this chapter.

FINANCIAL AND ACCOUNTING REPORTS AND REQUESTS

§ 1.785 Annual financial reports.

(a) An annual financial report shall be filed by telephone carriers and affiliates as required by part 43 of this chapter on form M.

(b) Verified copies of annual reports filed with the Securities and Exchange

Commission on its Form 10–K, Form 1–MD, or such other form as may be prescribed by that Commission for filing of equivalent information, shall be filed annually with this Commission by each person directly or indirectly controlling any communications common carrier in accordance with part 43 of this chapter.

(c) Carriers having separate departments or divisions for carrier and non-carrier operations shall file separate supplemental annual reports with respect to such carrier and non-carrier operations in accordance with part 43 of this chapter.

[28 FR 12450, Nov. 22, 1963, as amended at 31 FR 747, Jan. 20, 1966; 47 FR 50697, Nov. 9, 1982; 49 FR 36503, Sept. 18, 1984; 50 FR 41152, Oct. 9, 1985; 58 FR 36143, July 6, 1993]

§ 1.786 [Reserved]

§ 1.787 Reports of proposed changes in depreciation rates.

Carriers shall file reports regarding proposed changes in depreciation rates as required by part 43 of this chapter.

§ 1.789 Reports regarding division of international telegraph communication charges.

Carriers engaging in international telegraph communication shall file reports in regard to the division of communication charges as required by part 43 of this chapter.

§ 1.790 Reports relating to traffic by international carriers.

Carriers shall file periodic reports regarding international point-to-point traffic as required by part 43 of this chapter.

[57 FR 8579, Mar. 11, 1992]

§ 1.791 Reports and requests to be filed under part 32 of this chapter.

Reports and requests shall be filed either periodically, upon the happening of specified events, or for specific approval by telephone companies in accordance with and subject to the provisions of part 32 of this chapter.

[82 FR 20840, May 4, 2017]

§ 1.795 Reports regarding interstate rates of return.

Carriers shall file reports regarding interstate rates of return on FCC Form 492 as required by part 65 of this chapter.

[52 FR 274, Jan. 5, 1987]

SERVICES AND FACILITIES REPORTS

§ 1.802 Reports relating to continuing authority to supplement facilities or to provide temporary or emergency service.

Carriers receiving authority under part 63 of this chapter shall file quarterly or semiannual reports as required therein.

§ 1.803 Reports relating to reduction in temporary experimental service.

As required in part 63 of this chapter, carriers shall report reductions in service which had previously been expanded on an experimental basis for a temporary period.

MISCELLANEOUS REPORTS

§ 1.814 Reports regarding free service rendered the Government for national defense.

Carriers rendering free service in connection with the national defense to any agency of the United States Government shall file reports in accordance with part 2 of this chapter.

§ 1.815 Reports of annual employment.

(a) Each common carrier licensee or permittee with 16 or more full time employees shall file with the Commission, on or before May 31 of each year, on FCC Form 395, an annual employment report.

(b) A copy of every annual employment report filed by the licensee or permittee pursuant to the provisions herein; and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the permittee or licensee and the Commission pertaining to the reports after they have been filed and all documents incorporated herein by reference are open for public inspection at the offices of the Commission.

(c) *Cross references*— (1) [Reserved]

(2) *Applicability of cable television EEO reporting requirements for FSS facilities*, see § 25.601 of this chapter.

[35 FR 12894, Aug. 14, 1970, as amended at 36 FR 3119, Feb. 18, 1971; 58 FR 42249, Aug. 9, 1993; 69 FR 72026, Dec. 10, 2004]

GRANTS BY RANDOM SELECTION

Subpart F—Wireless Radio Services Applications and Proceedings

SOURCE: 28 FR 12454, Nov. 22, 1963, unless otherwise noted.

SCOPE AND AUTHORITY

§ 1.901 Basis and purpose.

The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq*. The purpose of the rules in this subpart is to establish the requirements and conditions under which entities may be licensed in the Wireless Radio Services as described in this part and in parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 90, 95, 96, 97, and 101 of this chapter.

[83 FR 60, Jan. 2, 2018]

§ 1.902 Scope.

In case of any conflict between the rules set forth in this subpart and the rules set forth in parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 90, 95, 96, 97, and 101 of title 47, chapter I of the Code of Federal Regulations, the rules in this part shall govern.

[83 FR 60, Jan. 2, 2018]

§ 1.903 Authorization required.

(a) *General rule*. Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part, except as specified in paragraph (b) of this section.

(b) *Restrictions*. The holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization. Authorizations may be granted upon proper application, provided that the Commission finds that the applicant is qualified in regard to citizenship, character, financial, technical and other criteria, and that the public interest, convenience and necessity will be served. *See* §§ 301, 308, and 309, 310 of this chapter.

(c) *Subscribers*. Authority for subscribers to operate mobile or fixed stations in the Wireless Radio Services, except for certain stations in the Rural Radiotelephone Service, is included in the authorization held by the licensee providing service to them. Subscribers are not required to apply for, and the Commission does not accept, applications from subscribers for individual mobile or fixed station authorizations in the Wireless Radio Services. Individual authorizations are required to operate rural subscriber stations in the Rural Radiotelephone Service, except as provided in § 22.703 of this chapter. Individual authorizations are required for end users of certain Specialized Mobile Radio Systems as provided in § 90.655 of this chapter. In addition, certain ships and aircraft are required to be individually licensed under parts 80 and 87 of this chapter. See §§ 80.13, 87.18 of this chapter.

[63 FR 68921, Dec. 14, 1998, as amended at 70 FR 19305, Apr. 13, 2005]

§ 1.907 Definitions.

Antenna structure. The term antenna structure includes the radiating and receiving elements, its supporting structures, towers, and all appurtenances mounted thereon.

Application. A request on a standard form for a station license as defined in § 3(b) of the Communications Act, signed in accordance with § 1.917 of this part, or a similar request to amend a pending application or to modify or renew an authorization. The term also encompasses requests to assign rights granted by the authorization or to transfer control of entities holding authorizations.

Auctionable license. A Wireless Radio Service license identified in § 1.2102 of this part for which competitive bidding is used to select from among mutually exclusive applications.

Auctionable license application. A Wireless Radio Service license application identified in § 1.2102 of this part for which competitive bidding is used if

the application is subject to mutually exclusive applications.

Authorization. A written instrument or oral statement issued by the FCC conveying authority to operate, for a specified term, to a station in the Wireless Telecommunications Services.

Authorized bandwidth. The maximum bandwidth permitted to be used by a station as specified in the station license. *See* § 2.202 of this chapter.

Authorized power. The maximum power a station is permitted to use. This power is specified by the Commission in the station's authorization or rules.

Control station. A fixed station, the transmissions of which are used to control automatically the emissions or operations of a radio station, or a remote base station transmitter.

Covered geographic licenses. Covered geographic licenses consist of the following services: 1.4 GHz Service (part 27, subpart I, of this chapter); 1.6 GHz Service (part 27, subpart J); 24 GHz Service and Digital Electronic Message Services (part 101, subpart G, of this chapter); 218–219 MHz Service (part 95, subpart F, of this chapter); 220–222 MHz Service, excluding public safety licenses (part 90, subpart T, of this chapter); 600 MHz Service (part 27, subpart N); 700 MHz Commercial Services (part 27, subparts F and H); 700 MHz Guard Band Service (part 27, subpart G); 800 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Specialized Mobile Radio Service (part 90, subpart S); 900 MHz Broadband Service (part 27, subpart P); 3.45 GHz Service (part 27, subpart Q); 3.7 GHz Service (part 27, subpart O); Advanced Wireless Services (part 27, subparts K and L); Air-Ground Radiotelephone Service (Commercial Aviation) (part 22, subpart G, of this chapter); Broadband Personal Communications Service (part 24, subpart E, of this chapter); Broadband Radio Service (part 27, subpart M); Cellular Radiotelephone Service (part 22, subpart H); Citizens Broadband Radio Service (part 96, subpart C, of this chapter); Dedicated Short Range Communications Service, excluding public safety licenses (part 90, subpart M); Educational Broadband Service (part 27, subpart M); H Block Service (part 27, subpart K); Local Multipoint Distribution Service (part 101, subpart L); Multichannel Video Distribution and Data Service (part 101, subpart P); Multilateration Location and Monitoring Service (part 90, subpart M); Multiple Address Systems (EAs) (part 101, subpart O); Narrowband Personal Communications Service (part 24, subpart D); Paging and Radiotelephone Service (part 22, subpart E; part 90, subpart P); VHF Public Coast Stations, including Automated Maritime Telecommunications Systems (part 80, subpart J, of this chapter); Upper Microwave Flexible Use Service (part 30 of this chapter); and Wireless Communications Service (part 27, subpart D).

Covered Site-based Licenses. Covered site-based licenses consist of the following services: 220–222 MHz Service (site-based), excluding public safety licenses (part 90, subpart T of this chapter); 800/900 MHz (SMR and Business and Industrial Land Transportation Pool) (part 90, subpart S); Aeronautical Advisory Stations (Unicoms) (part 87, subpart G); Air-Ground Radiotelephone Service (General Aviation) (part 22, subpart G); Alaska-Public Fixed Stations (part 80, subpart O); Broadcast Auxiliary Service (part 74, subparts D, E, F, and H); Common Carrier Fixed Point-to-Point, Microwave Service (part 101, subpart I); Industrial/Business Radio Pool (part 90, subpart C); Local Television Transmission Service (part 101, subpart J); Multiple Address Systems (site-based), excluding public safety licenses (part 101, subpart H); Non-Multilateration Location and Monitoring Service (part 90, subpart M); Offshore Radiotelephone Service (part 22, subpart I); Paging and Radiotelephone Service (site-based) (part 22, subpart E); Private Carrier Paging (part 90, subpart P); Private Operational Fixed Point-to-Point Microwave Service, excluding public safety licenses (part 101, subpart H); Public Coast Stations (site-based) (part 80, subpart J); Radiodetermination Service Stations (Radionavigation Land Stations) (part 87, subpart Q); Radiolocation Service (part 90, subpart F); and Rural Radiotelephone Service (including Basic Exchange Telephone Radio Service) (part 22, subpart F).

Effective radiated power (ERP). The product of the power supplied to the antenna multiplied by the gain of the antenna referenced to a half-wave dipole.

Equivalent Isotopically Radiated Power (EIRP). The product of the power supplied to the antenna multiplied by the antenna gain referenced to an isotropic antenna.

Fixed station. A station operating at a fixed location.

Harmful interference. Interference that endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radio communications service operating in accordance with the Radio Regulations.

Mobile relay station. A fixed transmitter used to facilitate the transmission of communications between mobile units.

Mobile station. A radio communication station capable of being moved and which ordinarily does move.

Non-auctionable license. A Wireless Radio Service license identified in §1.2102 of this part for which competitive bidding is not used to select from among mutually exclusive applications.

Non-auctionable license application. A Wireless Radio Service license application for which §1.2102 of this part precludes the use of competitive bidding if the application is subject to mutually exclusive applications.

Private Wireless Services. Wireless Radio Services authorized by parts 80, 87, 90, 95, 96, 97, and 101 that are not Wireless Telecommunications Services, as defined in this part.

Radio station. A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radio communications service.

Receipt date. The date an electronic or paper application is received at the appropriate location at the Commission or U.S. Bank. Amendments to pending applications may result in the assignment of a new receipt date in accordance with §1.927 of this part.

Spectrum leasing arrangement. An arrangement between a licensed entity and a third-party entity in which the licensee leases certain of its spectrum usage rights to a spectrum lessee, as set forth in subpart X of this part (47 CFR 1.9001 *et seq.*). Spectrum leasing arrangement is defined in §1.9003.

Spectrum lessee. Any third party entity that leases, pursuant to the spectrum leasing rules set forth in subpart X of this part (47 CFR 1.9001 *et seq.*), certain spectrum usage rights held by a licensee. Spectrum lessee is defined in §1.9003.

Universal Licensing System. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

Wireless Radio Services. All radio services authorized in parts 13, 20, 22, 24, 26, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101 of this chapter, whether commercial or private in nature.

Wireless Telecommunications Services. Wireless Radio Services, whether fixed or mobile, that meet the definition of ''telecommunications service'' as defined by 47 U.S.C. 153, as amended, and are therefore subject to regulation on a common carrier basis.

[63 FR 68921, Dec. 14, 1998, as amended at 73 FR 9018, Feb. 19, 2008; 78 FR 41321, July 10, 2013; 80 FR 36218, June 23, 2015; 81 FR 79930, Nov. 14, 2016; 82 FR 41544, Sept. 1, 2017; 83 FR 7401, Feb. 21, 2018; 83 FR 63095, Dec. 7, 2018; 84 FR 57363, Oct. 25, 2019; 85 FR 22861, Apr. 23, 2020; 85 FR 41929, July 13, 2020; 85 FR 43129, July 16, 2020; 86 FR 17942, Apr. 7, 2021]

APPLICATION REQUIREMENTS AND PROCEDURES

§ 1.911 Station files.

Applications, notifications, correspondence, electronic filings and other material, and copies of authorizations, comprising technical, legal, and administrative data relating to each station in the Wireless Radio Services are maintained by the Commission in ULS. These files constitute the official records for these stations

and supersede any other records, database or lists from the Commission or other sources.

[63 FR 68922, Dec. 14, 1998]

§ 1.913 Application and notification forms; electronic and manual filing.

(a) *Application and notification forms.* Applicants, licensees, and spectrum lessees (see § 1.9003) shall use the following forms and associated schedules for all applications and notifications:

(1) *FCC Form 601, Application for Authorization in the Wireless Radio Services.* FCC Form 601 and associated schedules are used to apply for initial authorizations, modifications to existing authorizations, amendments to pending applications, renewals of station authorizations, special temporary authority, notifications, requests for extension of time, and administrative updates.

(2) *FCC Form 602, Wireless Radio Services Ownership Form.* FCC Form 602 is used by applicants and licensees in auctionable services to provide and update ownership information as required by §§ 1.919, 1.948, 1.2112, and any other section that requires the submission of such information.

(3) *FCC Form 603, Application for Assignment of Authorization or Transfer of Control.* FCC Form 603 is used by applicants and licensees to apply for Commission consent to assignments of existing authorizations, to apply for Commission consent to transfer control of entities holding authorizations, to notify the Commission of the consummation of assignments or transfers, and to request extensions of time for consummation of assignments or transfers. It is also used for Commission consent to partial assignments of authorization, including partitioning and disaggregation.

(4) *FCC Form 605, Quick-form Application for Authorization for Wireless Radio Services.* FCC Form 605 is used to apply for Amateur, Ship, Aircraft, and General Mobile Radio Service (GMRS) authorizations, as well as Commercial Radio Operator Licenses.

(5) *FCC Form 608, Notification or Application for Spectrum Leasing Arrangement.* FCC Form 608 is used by licensees and spectrum lessees (*see* § 1.9003) to notify the Commission regarding spectrum manager leasing arrangements and to apply for Commission consent for *de facto* transfer leasing arrangements pursuant to the rules set forth in part 1, subpart X. It is also used to notify the Commission if a licensee or spectrum lessee establishes a private commons (*see* § 1.9080).

(6) FCC Form 609, Application to Report Eligibility Event. FCC Form 609 is used by licensees to apply for Commission approval of reportable eligibility events, as defined in § 1.2114.

(b) *Electronic filing.* Except as specified in paragraph (d) of this section or elsewhere in this chapter, all applications and other filings using the application and notification forms listed in this section or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS. For each Wireless Radio Service that is subject to mandatory electronic filing, this paragraph is effective on July 1, 1999, or six months after the Commission begins use of ULS to process applications in the service, whichever is later. The Commission will announce by public notice the deployment date of each service in ULS.

(1) Attachments to applications and notifications should be uploaded along with the electronically filed applications and notifications whenever possible. The files, other than the ASCII table of contents, should be in Adobe Acrobat Portable Document Format (PDF) whenever possible.

(2) Any associated documents submitted with an application or notification must be uploaded as attachments to the application or notification whenever possible. The attachment should be uploaded via ULS in Adobe Acrobat Portable Document Format (PDF) whenever possible.

(c) *Auctioned license applications.* Auctioned license applications, as defined in § 1.907 of this part, shall also comply with the requirements of subpart Q of this part and the applicable Commission orders and public notices issued with respect to each auction for a particular service and spectrum.

(d) [Reserved]

(e) *Applications requiring prior coordination.* Parties filing applications that require frequency coordination shall, prior to filing, complete all applicable

frequency coordination requirements in service-specific rules contained within this chapter. After appropriate frequency coordination, such applications must be electronically filed via ULS. Applications filed by the frequency coordinator on behalf of the applicant must be filed electronically.

(f) *Applications for amateur licenses.* Each candidate for an amateur radio operator license which requires the applicant to pass one or more examination elements must present the administering Volunteer Examiners (VE) with all information required by this section prior to the examination. The VEs may collect the information required by this section in any manner of their choosing, including creating their own forms. Upon completion of the examination, the administering VEs will immediately grade the test papers and will then issue a certificate for successful completion of an amateur radio operator examination (CSCE) if the applicant is successful. The VEs will send all necessary information regarding a candidate to the Volunteer-Examiner Coordinator (VEC) coordinating the examination session. Applications filed with the Commission by VECs and all other applications for amateur service licenses must be filed electronically via ULS. Feeable requests for vanity call signs must be filed in accordance with § 0.401 of this chapter or electronically filed via ULS.

(g) *Section 337 Requests.* Applications to provide public safety services submitted pursuant to 47 U.S.C. 337 must be filed on the same form and in the same manner as other applications for the requested frequency(ies), except that applicants must select the service code reflective of the type of service the applicant intends to provide.

[63 FR 68922, Dec. 14, 1998, as amended at 66 FR 55, Jan. 2, 2001; 67 FR 34851, May 16, 2002; 68 FR 42995, July 21, 2003; 68 FR 66276, Nov. 25, 2003; 69 FR 77549, Dec. 27, 2004; 71 FR 26251, May 4, 2006; 78 FR 23152, Apr. 18, 2013; 78 FR 25160, Apr. 29, 2013; 85 FR 85529, Dec. 29, 2020]

EFFECTIVE DATE NOTES: 1. At 69 FR 77549, Dec. 27, 2004, § 1.913(a)(5) was added. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 78 FR 23152, Apr. 18, 2013, § 1.913(d)(1)(vi) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1.915 General application requirements.

(a) *General requirement.* Except as provided in paragraph (b) of this section, for all Wireless Radio Services, station licenses, as defined in section 308(a) of the Communications Act, as amended, operator licenses, modifications or renewals of licenses, assignments or transfers of control of station licenses or any rights thereunder, and waiver requests associated with any of the foregoing shall be granted only upon an application filed pursuant to §§ 1.913 through 1.917 of this part.

(b)(1) *Exception for emergency filings.* The Commission may grant station licenses, or modifications or renewals thereof, without the filing of a formal application in the following cases:

(i) an emergency found by the Commission to involve danger to life or property or to be due to damage to equipment;

(ii) a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged, when such action is necessary for the national defense or security or otherwise in furtherance of the war effort; or

(iii) an emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedures.

(2) No such authorization shall be granted for or continue in effect beyond the period of the emergency or war requiring it. The procedures to be followed for emergency requests submitted under this subparagraph are the same as for seeking special temporary authority under § 1.931 of this part. After the end of the period of emergency, the party must submit its request by filing the appropriate FCC form in accordance with paragraph (a) of this section.

[63 FR 68923, Dec. 14, 1998]

§ 1.917 Who may sign applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments, and related statements of fact required by the Commission must be signed as follows (either electronically or manually, *see* paragraph (d) of this section): (1) By the applicant, if the applicant is an individual; (2) by one of the partners if the applicant is a partnership; (3) by an officer, director, or duly authorized employee, if the applicant is a corporation; (4) by a member who is an officer, if the applicant is an unincorporated association; or (5) by the trustee if the applicant is an amateur radio service club. Applications, amendments, and related statements of fact filed on behalf of eligible government entities such as states and territories of the United States, their political subdivisions, the District of Columbia, and units of local government, including unincorporated municipalities, must be signed by a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or absence from the United States, or by applicant's designated vessel master when a temporary permit is requested for a vessel. The attorney shall, when applicable, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's or master's belief only (rather than knowledge), the attorney or master shall separately set forth the reasons for believing that such statements are true. Only the original of applications, amendments, and related statements of fact need be signed.

(c) Applications, amendments, and related statements of fact need not be signed under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, 18 U.S.C. 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to 312(a)(1) of the Communications Act of 1934, as amended.

(d) ''Signed,'' as used in this section, means, for manually filed applications only, an original hand-written signature or, for electronically filed applications only, an electronic signature. An electronic signature shall consist of the name of the applicant transmitted electronically via ULS or any other electronic filing interface the Commission may designate and entered on the application as a signature.

[63 FR 68923, Dec. 14, 1998, as amended at 85 FR 85530, Dec. 29, 2020]

§ 1.919 Ownership information.

(a) Applicants or licensees in Wireless Radio Services that are subject to the ownership reporting requirements of § 1.2112 shall use FCC Form 602 to provide all ownership information required by the chapter.

(b) Any applicant or licensee that is subject to the reporting requirements of § 1.2112 or § 1.2114 shall file an FCC Form 602, or file an updated form if the ownership information on a previously filed FCC Form 602 is not current, at the time it submits:

(1) An initial application for authorization (FCC Form 601);

(2) An application for license renewal (FCC Form 601);

(3) An application for assignment of authorization or transfer of control (FCC Form 603); or

(4) A notification of consummation of a *pro forma* assignment of authorization or transfer of control (FCC Form 603) under the Commission's forbearance procedures (see § 1.948(c) of this part).

(5) An application reporting any reportable eligibility event, as defined in § 1.2114.

(c) [Reserved]

(d) A single FCC Form 602 may be associated with multiple applications filed by the same applicant or licensee. If an applicant or licensee already has a current FCC Form 602 on file when it files an initial application, renewal application, application for assignment or transfer of control, or notification of a *pro forma* assignment or transfer, it may certify that it has a current FCC Form 602 on file.

(e) No filing fee is required to submit or update FCC Form 602.

(f) Applicants or licensees in Wireless Radio Services that are not subject to the ownership reporting requirements of §1.2112 are not required to file FCC Form 602. However, such applicants and licensees may be required by the rules applicable to such services to disclose the real party (or parties) in interest to the application, including (as required) a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant or licensee.

[63 FR 68923, Dec. 14, 1998, as amended at 68 FR 42995, July 21, 2003; 69 FR 75170, Dec. 15, 2004; 71 FR 26251, May 4, 2006; 79 FR 72150, Dec. 5, 2014]

§ 1.923 Content of applications.

(a) *General*. Applications must contain all information requested on the applicable form and any additional information required by the rules in this chapter and any rules pertaining to the specific service for which the application is filed.

(b) *Reference to material on file*. Questions on application forms that call for specific technical data, or that can be answered yes or no or with another short answer, must be answered on the form. Otherwise, if documents, exhibits, or other lengthy showings already on file with the FCC contain information required in an application, the application may incorporate such information by reference, provided that:

(1) The referenced information has been filed in ULS or, if manually filed outside of ULS, the information comprises more than one ''8½ × 11'' page.

(2) The referenced information is current and accurate in all material respects; and

(3) The application states specifically where the referenced information can actually be found, including:

(i) The station call sign or application file number and its location if the reference is to station files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, if the reference is to a docketed proceeding.

(c) *Antenna locations*. Applications for stations at fixed locations must describe each transmitting antenna site by its geographical coordinates and also by its street address, or by reference to a nearby landmark. Geographical coordinates, referenced to NAD83, must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude.

(d) *Antenna structure registration*. Owners of certain antenna structures must notify the Federal Aviation Administration and register with the Commission as required by part 17 of this chapter. Applications proposing the use of one or more new or existing antenna structures must contain the FCC Antenna Structure Registration Number(s) of each structure for which registration is required. To facilitate frequency coordination or for other purposes, the Bureau shall accept for filing an application that does not contain the FCC Antenna Structure Registration Number so long as;

(1) The antenna structure owner has filed an antenna structure registration application (FCC Form 854);

(2) The antenna structure owner has provided local notice and the Commission has posted notification of the proposed construction on its Web site pursuant to §17.4(c)(3) and (4) of this chapter; and

(3) The antenna structure owner has obtained a Determination of No Hazard to Aircraft Navigation from the Federal Aviation Administration. In such instances, the applicant shall provide the FCC Form 854 File Number on its application. Once the antenna structure owner has obtained the Antenna Structure Registration Number, the applicant shall amend its application to provide the Antenna Structure Registration Number, and the Commission shall not grant the application before the Antenna Structure Registration Number has been provided. If registration is not required, the applicant must provide information in its application sufficient for the Commission to verify this fact.

(e) *Environmental concerns*. (1) Environmental processing shall be completed pursuant to the process set forth in §17.4(c) of this chapter for any facilities that use one or more new or existing antenna structures for which a new or amended registration is required by part 17 of this chapter. Environmental

review by the Commission must be completed prior to construction.

(2) For applications that propose any facilities that are not subject to the process set forth in §17.4(c) of this chapter, the applicant is required to indicate at the time its application is filed whether or not a Commission grant of the application for those facilities may have a significant environmental effect as defined by §1.1307. If the applicant answers affirmatively, an Environmental Assessment, required by §1.1311 must be filed with the application and environmental review by the Commission must be completed prior to construction.

(f) *International coordination*. Channel assignments and/or usage under this part are subject to the applicable provisions and requirements of treaties and other international agreements between the United States government and the governments of Canada and Mexico.

(g) *Quiet zones*. Each applicant is required to comply with the ''Quiet Zone'' rule (see §1.924).

(h) *Taxpayer Identification Number (TINs)*. Wireless applicants and licensees, including all attributable owners of auctionable licenses as defined by §1.2112 of this part, are required to provide their Taxpayer Identification Numbers (TINS) (as defined in 26 U.S.C. 6109) to the Commission, pursuant to the Debt Collection Improvement Act of 1996 (DCIA). Under the DCIA, the FCC may use an applicant or licensee's TIN for purposes of collecting and reporting to the Department of the Treasury any delinquent amounts arising out of such person's relationship with the Government. The Commission will not publicly disclose applicant or licensee TINs unless authorized by law, but will assign a ''public identification number'' to each applicant or licensee registering a TIN. This public identification number will be used for agency purposes other than debt collection.

(i) *Email address*. Unless an exception is set forth elsewhere in this chapter, each applicant must specify an email address where the applicant can receive electronic correspondence. This email address will be used by the Commission to serve documents or direct correspondence to the applicant. Any correspondence sent to the email address currently on file shall be deemed to have been served on the applicant. Each applicant should also provide a United States Postal Service address.

[63 FR 68924, Dec. 14, 1998, as amended at 64 FR 53238, Oct. 1, 1999; 77 FR 3952, Jan. 26, 2012; 85 FR 85530, Dec. 29, 2020]

§1.924 Quiet zones.

Areas implicated by this paragraph are those in which it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference. Consent throughout this paragraph means written consent from the quiet zone, radio astronomy, research, and receiving installation entity. The areas involved and procedures required are as follows:

(a) *NRAO, NRRO*. The requirements of this paragraph are intended to minimize possible interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia.

(1) Applicants and licensees planning to construct and operate a new or modified station at a permanent fixed location within the area bounded by N 39°15′0.4″ on the north, W 78°29′59.0″ on the east, N 37°30′0.4″ on the south, and W 80°29′59.2″ on the west must notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, West Virginia 24944, in writing, of the technical details of the proposed operation. The notification must include the geographical coordinates of the antenna location, the antenna height, antenna directivity (if any), the channel, the emission type and power.

(2) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (a)(1) of this section may be made prior to, or simultaneously with the application. The application must state the date that notification in accordance with paragraph (a)(1) of this section was made. After receipt of such

applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated. If an applicant submits written consent from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the FCC will process the application without awaiting the conclusion of the 20-day period. For services that do not require individual station authorization, entities that have obtained written consent from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory may begin to operate new or modified facilities prior to the end of the 20-day period. In instances in which notification has been made to the National Radio Astronomy Observatory prior to application filing, the applicant must also provide notice to the quiet zone entity upon actual filing of the application with the FCC. Such notice will be made simultaneous with the filing of the application and shall comply with the requirements of paragraph (a)(1) of this section.

(3) If an objection is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the FCC will, after consideration of the record, take whatever action is deemed appropriate.

(b) *Table Mountain.* The requirements of this paragraph are intended to minimize possible interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado.

(1) Licensees and applicants planning to construct and operate a new or modified station at a permanent fixed location in the vicinity of Boulder County, Colorado are advised to give consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from interference. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07′49.9″ North Latitude, 105°14′42.0″ West Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the values given in the following table:

FIELD STRENGTH LIMITS FOR TABLE MOUNTAIN [1]

Frequency range	Field strength (mV/m)	Power flux density (dBW/m^2)
Below 540 kHz	10	−65.8
540 to 1600 kHz	20	−59.8
1.6 to 470 MHz	10	−65.8
470 to 890 MHz	30	−56.2
890 MHz and above	1	−85.8

[1] NOTE: Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7Ω (120πΩ).

(2) Advance consultation is recommended, particularly for applicants that have no reliable data to indicate whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities. In general, coordination is recommended for:

(i) Stations located within 2.4 kilometers (1.5 miles) of the Table Mountain Radio Receiving Zone;

(ii) Stations located within 4.8 kilometers (3 miles) transmitting with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations located with 16 kilometers (10 miles) transmitting with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Radio Receiving Zone;

(iv) Stations located within 80 kilometers (50 miles) transmitting with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(3) Applicants concerned are urged to communicate with the Radio Frequency Manager, Department of Commerce, 325 Broadway, Boulder, CO 80305; *Telephone:* 303–497–4619, *Fax:* 303–497–6982, *E-mail: frequencymanager@its.bldrdoc.gov*, in advance of filing their applications with the Commission.

(4) The FCC will not screen applications to determine whether advance

consultation has taken place. However, such consultation may avoid the filing of objections from the Department of Commerce or institution of proceedings to modify the authorizations of stations that radiate signals with a field strength or power flux density at the site in excess of those specified herein.

(c) *Federal Communications Commission protected field offices.* The requirements of this paragraph are intended to minimize possible interference to FCC monitoring activities.

(1) Licensees and applicants planning to construct and operate a new or modified station at a permanent fixed location in the vicinity of an FCC protected field office are advised to give consideration, prior to filing applications, to the need to avoid interfering with the monitoring activities of that office. FCC protected field offices are listed in § 0.121 of this chapter.

(2) Applications for stations (except mobile stations) that could produce on any channel a direct wave fundamental field strength of greater than 10 mV/m (-65.8 dBW/m^2 power flux density assuming a free space characteristic impedance of 120π Ω) in the authorized bandwidth at the protected field office may be examined to determine the potential for interference with monitoring activities. After consideration of the effects of the predicted field strength of the proposed station, including the cumulative effects of the signal from the proposed station with other ambient radio field strength levels at the protected field office, the FCC may add a condition restricting radiation toward the protected field office to the station authorization.

(3) In the event that the calculated field strength exceeds 10 mV/m at the protected field office site, or if there is any question whether field strength levels might exceed that level, advance consultation with the FCC to discuss possible measures to avoid interference to monitoring activities should be considered. Prospective applicants may communicate with: Chief, Enforcement Bureau, Federal Communications Commission, Washington, DC 20554.

(4) Advance consultation is recommended for applicants that have no reliable data to indicate whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities. In general, coordination is recommended for:

(i) Stations located within 2.4 kilometers (1.5 miles) of the protected field office;

(ii) Stations located within 4.8 kilometers (3 miles) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the protected field offices.

(iii) Stations located within 16 kilometers (10 miles) with 1 kw or more average ERP in the primary plane of polarization in the azimuthal direction of the protected field office;

(iv) Stations located within 80 kilometers (50 miles) with 25 kw or more average ERP in the primary plane of polarization in the azimuthal direction of the protected field office;

(v) Advance coordination for stations transmitting on channels above 1000 MHz is recommended only if the proposed station is in the vicinity of a protected field office designated as a satellite monitoring facility in § 0.121 of this chapter.

(vi) The FCC will not screen applications to determine whether advance consultation has taken place. However, such consultation may serve to avoid the need for later modification of the authorizations of stations that interfere with monitoring activities at protected field offices.

(d) *Notification to the Arecibo Observatory.* The requirements in this section are intended to minimize possible interference at the Arecibo Observatory in Puerto Rico. Licensees must make reasonable efforts to protect the Observatory from interference. Licensees planning to construct and operate a new station at a permanent fixed location on the islands of Puerto Rico, Desecheo, Mona, Vieques or Culebra in services in which individual station licenses are issued by the FCC; planning to construct and operate a new station at a permanent fixed location on these islands that may cause interference to the operations of the Arecibo Observatory in services in which individual station licenses are not issued by the FCC; or planning a modification of any existing station at a permanent fixed

location on these islands that would increase the likelihood of causing interference to the operations of the Arecibo Observatory must notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically (e-mail address: *prcz@naic.edu*), of the technical parameters of the planned operation. Carriers may wish to use the interference guidelines provided by Cornell University as guidance in designing facilities to avoid interference to the Observatory. The notification must include identification of the geographical coordinates of the antenna location (NAD–83 datum), the antenna height, antenna directivity (if any), proposed channel and FCC Rule Part, type of emission, and effective isotropic radiated power.

(1) In the Amateur radio service:

(i) The provisions of paragraph (d) of this section do not apply to repeaters that transmit on the 1.2 cm or shorter wavelength bands; and

(ii) The coordination provision of paragraph (d) of this section does not apply to repeaters that are located 16 km or more from the Arecibo observatory.

(2) In services in which individual station licenses are issued by the FCC, the notification required in paragraph (d) of this section may be made prior to, or simultaneously with, the filing of the application with the FCC, and at least 20 days in advance of the applicant's planned operation. The application must state the date that notification in accordance with paragraph (d) of this section was made. In services in which individual station licenses are not issued by the FCC, the notification required in paragraph (d) of this section should be sent at least 45 days in advance of the applicant's planned operation. In the latter services, the Interference Office must inform the FCC of a notification by an applicant within 20 days if the Office plans to file comments or objections to the notification. After the FCC receives an application from a service applicant or is informed by the Interference Office of a notification from a service applicant, the FCC will allow the Interference Office a period of 20 days for comments or objections in response to the application or notification. If an applicant submits written consent from the Interference Office, the FCC will process the application without awaiting the conclusion of the 20-day period. For services that do not require individual station authorization, entities that have obtained written consent from the Interference Office may begin to operate new or modified facilities prior to the end of the 20-day period. In instances in which notification has been made to the Interference Office prior to application filing, the applicant must also provide notice to the Interference Office upon actual filing of the application with the FCC. Such notice will be made simultaneous with the filing of the application and shall comply with the requirements of paragraph (d) of this section.

(3) If an objection to any planned service operation is received during the 20-day period from the Interference Office, the FCC will take whatever action is deemed appropriate.

(4) The provisions of paragraph (d) of this section do not apply to operations that transmit on frequencies above 15 GHz.

(e) *420–450 MHz band.* Applicants for pulse-ranging radiolocation systems operating in the 420–450 MHz band along the shoreline of the conterminous United States and Alaska, and for spread spectrum radiolocation systems operating in the 420–435 MHz sub-band within the conterminous United States and Alaska, should not expect to be accommodated if their area of service is within:

(1) Arizona, Florida, or New Mexico;

(2) Those portions of California and Nevada that are south of latitude 37°10′ N.;

(3) That portion of Texas that is west of longitude 104° W.; or

(4) The following circular areas:

(i) 322 kilometers (km) of 30°30′ N., 86°30′ W.

(ii) 322 km of 28°21′ N., 80°43′ W.

(iii) 322 km of 34°09′ N., 119°11′ W.

(iv) 240 km of 39°08′ N., 121°26′ W.

(v) 200 km of 31°25′ N., 100°24′ W.

(vi) 200 km of 32°38′ N., 83°35′ W.

(vii) 160 km of 64°17′ N., 149°10′ W.

(viii) 160 km of 48°43′ N., 97°54′ W.

(ix) 160 km of 41°45′ N., 70°32′ W.

(f) *17.7–19.7 GHz band.* The following exclusion areas and coordination areas are established to minimize or avoid harmful interference to Federal Government earth stations receiving in the 17.7–19.7 GHz band:

(1) No application seeking authority for fixed stations, under parts 74, 78, or 101 of this chapter, supporting the operations of Multichannel Video Programming Distributors (MVPD) in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service will be accepted for filing if the proposed station is located within 20 km (or within 55 km if the modification application is for an outdoor low power operation pursuant to §101.147(r)(14) of this chapter) of Denver, CO (39°43′ N., 104°46′ W.) or Washington, DC (38°48′ N., 76°52′ W.).

(2) Any application for a new station license to provide MVPD operations in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service, or for modification of an existing station license in these bands which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the following areas:

(i) *Denver, CO area:*

(A) Between latitudes 41°30′ N. and 38°30′ N. and between longitudes 103°10′ W. and 106°30′ W.

(B) Between latitudes 38°30′ N. and 37°30′ N. and between longitudes 105°00′ W. and 105°50′ W.

(C) Between latitudes 40°08′ N. and 39°56′ N. and between longitudes 107°00′ W. and 107°15′ W.

(ii) *Washington, DC area:*

(A) Between latitudes 38°40′ N. and 38°10′ N. and between longitudes 78°50′ W. and 79°20′ W.

(B) Within 178 km of 38°48′ N., 76°52′ W.

(iii) *San Miguel, CA area:*

(A) Between latitudes 34°39′ N. and 34°00′ N. and between longitudes 118°52′ W. and 119°24′ W.

(B) Within 200 km of 35°44′ N., 120°45′ W.

(iv) *Guam area:* Within 100 km of 13°35′ N., 144°51′ E.

Note to §1.924(f): The coordinates cited in this section are specified in terms of the ''North American Datum of 1983 (NAD 83).''

(g) *GOES.* The requirements of this paragraph are intended to minimize harmful interference to Geostationary Operational Environmental Satellite earth stations receiving in the band 1670–1675 MHz, which are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland.

(1) Applicants and licensees planning to construct and operate a new or modified station within the area bounded by a circle with a radius of 100 kilometers (62.1 miles) that is centered on 37°56′44″ N, 75°27′37″ W (Wallops Island) or 64°58′22″ N, 147°30′04″ W (Fairbanks) or within the area bounded by a circle with a radius of 65 kilometers (40.4 miles) that is centered on 39°00′02″ N, 76°50′29″ W (Greenbelt) must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. For this purpose, NOAA maintains the GOES coordination Web page at *http://www.osd.noaa.gov/radio/frequency.htm*, which provides the technical parameters of the earth stations and the point-of-contact for the notification. The notification shall include the following information: Requested frequency, geographical coordinates of the antenna location, antenna height above mean sea level, antenna directivity, emission type, equivalent isotropically radiated power, antenna make and model, and transmitter make and model.

(2) *Protection.* (i) Wallops Island and Fairbanks. Licensees are required to protect the Wallops Island and Fairbanks sites at all times.

(ii) *Greenbelt.* Licensees are required to protect the Greenbelt site only when it is active. Licensees should coordinate appropriate procedures directly with NOAA for receiving notification of times when this site is active.

(3) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (f)(1) of this section should be sent at the same time. The application must state the date that notification in accordance with paragraph (f)(1) of

this section was made. After receipt of such an application, the FCC will allow a period of 20 days for comments or objections in response to the notification.

(4) If an objection is received during the 20-day period from NOAA, the FCC will, after consideration of the record, take whatever action is deemed appropriate.

NOTE TO §1.924: Unless otherwise noted, all coordinates cited in this section are specified in terms of the North American Datum of 1983 (NAD 83).

[63 FR 68924, Dec. 14, 1998, as amended at 67 FR 6182, Feb. 11, 2002; 67 FR 13224, Mar. 21, 2002; 67 FR 41852, June 20, 2002; 67 FR 71111, Nov. 29, 2002; 69 FR 17957, Apr. 6, 2004; 70 FR 31372, June 1, 2005; 71 FR 69046, Nov. 29, 2006; 73 FR 25420, May 6, 2008; 75 FR 62932, Oct. 13, 2010; 80 FR 38823, July 7, 2015]

§ 1.925 Waivers.

(a) *Waiver requests generally*. The Commission may waive specific requirements of the rules on its own motion or upon request. The fees for such waiver requests are set forth in §1.1102 of this part.

(b) *Procedure and format for filing waiver requests*. (1) Requests for waiver of rules associated with licenses or applications in the Wireless Radio Services must be filed on FCC Form 601, 603, or 605.

(2) Requests for waiver must contain a complete explanation as to why the waiver is desired. If the information necessary to support a waiver request is already on file, the applicant may cross-reference the specific filing where the information may be found.

(3) The Commission may grant a request for waiver if it is shown that:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

(4) Applicants requiring expedited processing of their request for waiver shall clearly caption their request for waiver with the words ''WAIVER—EXPEDITED ACTION REQUESTED.''

(c) *Action on Waiver Requests*. (i) The Commission, in its discretion, may give public notice of the filing of a waiver request and seek comment from the public or affected parties.

(ii) Denial of a rule waiver request associated with an application renders that application defective unless it contains an alternative proposal that fully complies with the rules, in which event, the application will be processed using the alternative proposal as if the waiver had not been requested. Applications rendered defective may be dismissed without prejudice.

[63 FR 68926, Dec. 14, 1998]

§ 1.926 Application processing; initial procedures.

Applications are assigned file numbers and service codes in order to facilitate processing. Assignment of a file number to an application is for administrative convenience and does not constitute a determination that the application is acceptable for filing. Purpose and service codes appear on the Commission forms.

[63 FR 68927, Dec. 14, 1998]

§ 1.927 Amendment of applications.

(a) Pending applications may be amended as a matter of right if they have not been designated for hearing or listed in a public notice as accepted for filing for competitive bidding, except as provided in paragraphs (b) through (e) of this section.

(b) Applicants for an initial license in auctionable services may amend such applications only in accordance with Subpart Q of this part.

(c) Amendments to non-auction applications that are applied for under Part 101 or that resolve mutual exclusivity may be filed at any time, subject to the requirements of §1.945 of this part.

(d) Any amendment to an application for modification must be consistent with, and must not conflict with, any other application for modification regarding that same station.

(e) Amendments to applications designated for hearing may be allowed by

the presiding officer or, when a proceeding is stayed or otherwise pending before the full Commission, may be allowed by the Commission for good cause shown. In such instances, a written petition demonstrating good cause must be submitted and served upon the parties of record.

(f) Amendments to applications are also subject to the service-specific rules in applicable parts of this chapter.

(g) Where an amendment to an application specifies a substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant, the applicant must provide an exhibit with the amendment application containing an affirmative, factual showing as set forth in § 1.948(i)(2).

(h) Where an amendment to an application constitutes a major change, as defined in § 1.929, the amendment shall be treated as a new application for determination of filing date, public notice, and petition to deny purposes.

(i) If a petition to deny or other informal objection has been filed, a copy of any amendment (or other filing) must be served on the petitioner. If the FCC has issued a public notice stating that the application appears to be mutually exclusive with another application (or applications), a copy of any amendment (or other filing) must be served on any such mutually exclusive applicant (or applicants).

[63 FR 68927, Dec. 14, 1998, as amended at 64 FR 53238, Oct. 1, 1999; 70 FR 61058, Oct. 20, 2005]

§ 1.928 Frequency coordination, Canada.

(a) As a result of mutual agreements, the Commission has, since May 1950 had an arrangement with the Canadian Department of Communications for the exchange of frequency assignment information and engineering comments on proposed assignments along the Canada-United States borders in certain bands above 30 MHz. Except as provided in paragraph (b) of this section, this arrangement involves assignments in the following frequency bands.

MHz	
30.56–32.00	75.40–76.00
33.00–34.00	150.80–174.00
35.00–36.00	450–470
37.00–38.00	806.00–960.00
39.00–40.00	1850.0–2200.0
42.00–46.00	2450.0–2690.0
47.00–49.60	3700.0–4200.0
72.00–73.00	5925.0–7125.0
GHz	
10.55–10.68	10.70–13.25

(b) The following frequencies are not involved in this arrangement because of the nature of the services:

MHz	
156.3	156.95
156.35	157.0 and 161.6
156.4	157.05
156.45	157.1
156.5	157.15
156.55	157.20
156.6	157.25
156.65	157.30
156.7	157.35
156.8	157.40.
156.9	

(c) Assignments proposed in accordance with the railroad industry radio frequency allotment plan along the United States-Canada borders utilized by the Federal Communications Commission and the Department of Transport, respectively, may be excepted from this arrangement at the discretion of the referring agency.

(d) Assignments proposed in any radio service in frequency bands below 470 MHz appropriate to this arrangement, other than those for stations in the Domestic Public (land mobile or fixed) category, may be excepted from this arrangement at the discretion of the referring agency if a base station assignment has been made previously under the terms of this arrangement or prior to its adoption in the same radio service and on the same frequency and in the local area, and provided the basic characteristics of the additional station are sufficiently similar technically to the original assignment to preclude harmful interference to existing stations across the border.

(e) For bands below 470 MHz, the areas which are involved lie between Lines A and B and between Lines C and D, which are described as follows:

Line A—Begins at Aberdeen, Wash., running by great circle arc to the intersection of 48 deg. N., 120 deg. W., thence along parallel 48 deg. N., to the intersection of 95 deg. W., thence by great circle arc through the southernmost point of Duluth, Minn., thence by great circle arc to 45 deg. N., 85 deg. W., thence southward along meridian 85 deg. W., to its intersection with parallel 41 deg. N., thence along parallel 41 deg. N., to its intersection with meridian 82 deg. W., thence by great circle arc through the southernmost point of Bangor, Maine, thence by great circle arc through the southern-most point of Searsport, Maine, at which point it terminates; and

Line B—Begins at Tofino, B.C., running by great circle arc to the intersection of 50 deg. N., 125 deg. W., thence along parallel 50 deg. N., to the intersection of 90 deg. W., thence by great circle arc to the intersection of 45 deg. N., 79 deg. 30′ W., thence by great circle arc through the northernmost point of Drummondville, Quebec (lat: 45 deg. 52′ N., long: 72 deg. 30′ W.), thence by great circle arc to 48 deg. 30′ N., 70 deg. W., thence by great circle arc through the northernmost point of Campbellton, N.B., thence by great circle arc through the northernmost point of Liverpool, N.S., at which point it terminates.

Line C—Begins at the intersection of 70 deg. N., 144 deg. W., thence by great circle arc to the intersection of 60 deg. N., 143 deg. W., thence by great circle arc so as to include all of the Alaskan Panhandle; and

Line D—Begins at the intersection of 70 deg. N., 138 deg. W., thence by great circle arc to the intersection of 61 deg. 20′ N., 139 deg. W., (Burwash Landing), thence by great circle arc to the intersection of 60 deg. 45′ N., 135 deg. W., thence by great circle arc to the intersection of 56 deg. N., 128 deg. W., thence south along 128 deg. meridian to Lat. 55 deg. N., thence by great circle arc to the intersection of 54 deg. N., 130 deg. W., thence by great circle arc to Port Clements, thence to the Pacific Ocean where it ends.

(f) For all stations using bands between 470 MHz and 1000 MHz; and for any station of a terrestrial service using a band above 1000 MHz, the areas which are involved are as follows:

(1) For a station the antenna of which looks within the 200 deg. sector toward the Canada-United States borders, that area in each country within 35 miles of the borders;

(2) For a station the antenna of which looks within the 160 deg. sector away from the Canada-United States borders, that area in each country within 5 miles of the borders; and

(3) The area in either country within coordination distance as described in Recommendation 1A of the Final Acts of the EARC, Geneva, 1963 of a receiving earth station in the other country which uses the same band.

(g) Proposed assignments in the space radiocommunication services and proposed assignments to stations in frequency bands allocated coequally to space and terrestrial services above 1 GHz are not treated by these arrangements. Such proposed assignments are subject to the regulatory provisions of the International Radio Regulations.

(h) Assignments proposed in the frequency band 806–890 MHz shall be in accordance with the Canada-United States agreement, dated April 7, 1982.

[64 FR 53238, Oct. 1, 1999]

§ 1.929 Classification of filings as major or minor.

Applications and amendments to applications for stations in the wireless radio services are classified as major or minor (see § 1.947). Categories of major and minor filings are listed in § 309 of the Communications Act of 1934.

(a) For all stations in all Wireless Radio Services, whether licensed geographically or on a site-specific basis, the following actions are classified as major:

(1) Application for initial authorization;

(2) Any substantial change in ownership or control, including requests for partitioning and disaggregation;

(3) Application for renewal of authorization;

(4) Application or amendment requesting authorization for a facility that may have a significant environmental effect as defined in § 1.1307, unless the facility has been determined not to have a significant environmental effect through the process set forth in § 17.4(c) of this chapter.

(5) Application or amendment requiring frequency coordination pursuant to the Commission's rules or international treaty or agreement;

(6) Application or amendment requesting to add a frequency or frequency block for which the applicant is not currently authorized, excluding removing a frequency.

(b) In addition to those changes listed in paragraph (a) of this section, the following are major changes in the Cellular Radiotelephone Service:

(1) Application requesting authorization to expand the Cellular Geographic Service Area (CGSA) of an existing Cellular system or, in the case of an amendment, as previously proposed in an application to expand the CGSA; or

(2) Application or amendment requesting that a CGSA boundary or portion of a CGSA boundary be determined using an alternative method.

(3) [Reserved]

(c) In addition to those changes listed in paragraph (a) in this section, the following are major changes applicable to stations licensed to provide base-to-mobile, mobile-to-base, mobile-to-mobile on a site-specific basis:

(1) In the Paging and Radiotelephone Service, Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service (SMR), any change that would increase or expand the applicant's existing composite interference contour.

(2) In the 900 MHz SMR and 220 MHz Service, any change that would increase or expand the applicant's service area as defined in the rule parts governing the particular radio service.

(3) In the Paging and Radiotelephone Service, Rural Radiotelephone Service, Offshore Radiotelephone Service, and Specialized Mobile Radio Service:

(i) Request an authorization or an amendment to a pending application that would establish for the filer a new fixed transmission path;

(ii) Request an authorization or an amendment to a pending application for a fixed station (*i.e.*, control, repeater, central office, rural subscriber, or inter-office station) that would increase the effective radiated power, antenna height above average terrain in any azimuth, or relocate an existing transmitter;

(4) In the Private Land Mobile Radio Services (PLMRS), the remote pickup broadcast auxiliary service, and GMRS systems licensed to non-individuals;

(i) Change in frequency or modification of channel pairs, except the deletion of one or more frequencies from an authorization;

(ii) Change in the type of emission;

(iii) Change in effective radiated power from that authorized or, for GMRS systems licensed to non-individuals, an increase in the transmitter power of a station;

(iv) Change in antenna height from that authorized;

(v) Change in the authorized location or number of base stations, fixed, control, except for deletions of one or more such stations or, for systems operating on non-exclusive assignments in GMRS or the 470–512 MHz, 800 MHz or 900 MHz bands, a change in the number of mobile transmitters, or a change in the area of mobile transmitters, or a change in the area of mobile operations from that authorized;

(vi) Change in the class of a land station, including changing from multiple licensed to cooperative use, and from shared to unshared use.

(d) In the microwave, aural broadcast auxiliary, and television broadcast auxiliary services:

(1) Except as specified in paragraph (d)(2) and (d)(3) of this section, the following, in addition to those filings listed in paragraph (a) of this section, are major actions that apply to stations licensed to provide fixed point-to-point, point-to-multipoint, or multipoint-to-point, communications on a site-specific basis, or fixed or mobile communications on an area-specific basis under part 101 of this chapter:

(i) Any change in transmit antenna location by more than 5 seconds in latitude or longitude for fixed point-to-point facilities (e.g., a 5 second change in latitude, longitude, or both would be minor); any change in coordinates of the center of operation or increase in radius of a circular area of operation, or any expansion in any direction in the latitude or longitude limits of a rectangular area of operation, or any change in any other kind of area operation;

(ii) Any increase in frequency tolerance;

(iii) Any increase in bandwidth;

(iv) Any change in emission type;

(v) Any increase in EIRP greater than 3 dB;

(vi) Any increase in transmit antenna height (above mean sea level) more than 3 meters, except as specified in paragraph (d)(3) of this section;

(vii) Any increase in transmit antenna beamwidth, except as specified in paragraph (d)(3) of this section;

(viii) Any change in transmit antenna polarization;

(ix) Any change in transmit antenna azimuth greater than 1 degree, except as specified in paragraph (d)(3) of this section ; or,

(x) Any change which together with all minor modifications or amendments since the last major modification or amendment produces a cumulative effect exceeding any of the above major criteria.

(2) Changes to transmit antenna location of Multiple Address System (MAS) Remote Units and Digital Electronic Message Service (DEMS) User Units are not major.

(3) Changes in accordance with paragraphs (d)(1)(vi), (d)(1)(vii) and (d)(1)(ix) of this section are not major for the following:

(i) Fixed Two-Way MAS on the remote to master path,

(ii) Fixed One-Way Inbound MAS on the remote to master path,

(iii) Multiple Two-Way MAS on the remote to master and master to remote paths,

(iv) Multiple One-Way Outbound MAS on the master to remote path,

(v) Mobile MAS Master,

(vi) Fixed Two-Way DEMS on the user to nodal path, and

(vii) Multiple Two-Way DEMS on the nodal to user and user to nodal paths.

NOTE TO PARAGRAPH (d)(3) OF §1.929: For the systems and path types described in paragraph (d)(3) of this section, the data provided by applicants is either a typical value for a certain parameter or a fixed value given in the Form instructions.

(e) In addition to those filings listed in paragraph (a) of this section, the following are major actions that apply to stations licensed to provide service in the Air-ground Radiotelephone Service:

(1) Request an authorization to relocate an existing General Aviation ground station; or,

(2) Request the first authorization for a new Commercial Aviation ground station at a location other than those listed in §22.859 of this chapter.

(f) In addition to those changes listed in paragraph (a), the following are major changes that apply to stations licensed in the industrial radiopositioning stations for which frequencies are assigned on an exclusive basis, Maritime and Aviation services, except Maritime Public Coast VHF (CMRS), Ship and Aircraft stations:

(1) Any change in antenna azimuth;

(2) Any change in beamwidth;

(3) Any change in antenna location;

(4) Any change in emission type;

(5) Any increase in antenna height;

(6) Any increase in authorized power;

(7) Any increase in emission bandwidth.

(g) In addition to those changes listed in paragraph (a), any change requiring international coordination in the Maritime Public Coast VHF (CMRS) Service is major.

(h) In addition to those changes listed in paragraph (a) of this section, the following are major changes that apply to ship stations:

(1) Any request for additional equipment;

(2) A change in ship category;

(3) A request for assignment of a Maritime Mobile Service Identity (MMSI) number; or

(4) A request to increase the number of ships on an existing fleet license.

(i) In addition to those changes listed in paragraph (a) of this section, the following are major changes that apply to aircraft stations:

(1) A request to increase the number of aircraft on an existing fleet license; or

(2) A request to change the type of aircraft (private or air carrier).

(j) In addition to those changes listed in paragraph (a) of this section, the following are major changes that apply to amateur licenses:

(1) An upgrade of an existing license; or

(2) A change of call sign.

(k) Any change not specifically listed above as major is considered minor (*see* §1.947(b). This includes but is not limited to:

(1) Any pro forma assignment or transfer of control;

(2) Any name change not involving change in ownership or control of the license;

(3) Any email or physical mailing address and/or telephone number changes;

(4) Any changes in contact person;

(5) Any change to vessel name on a ship station license;

(6) Any change to a site-specific license, except a PLMRS license under part 90, or a license under part 101, where the licensee's interference contours are not extended and co-channel separation criteria are met, except those modifications defined in paragraph (c)(2) of this section; or

(7) Any conversion of multiple site-specific licenses into a single wide-area license, except a PLMRS license under part 90 or a license under part 101 of this chapter, where there is no change in the licensee's composite interference contour or service area as defined in paragraph (c)(2) of this section.

[63 FR 68927, Dec. 14, 1998, as amended at 64 FR 53239, Oct. 1, 1999; 68 FR 12755, Mar. 17, 2003; 70 FR 19306, Apr. 13, 2005; 70 FR 61058, Oct. 20, 2005; 76 FR 70909, Nov. 16, 2011; 77 FR 3952, Jan. 26, 2012; 79 FR 72150, Dec. 5, 2014; 85 FR 85530, Dec. 29, 2020]

EFFECTIVE DATE NOTE: At 87 FR 57415, Sept. 20, 2022, §1.929 was amended by adding paragraph (a)(7). This action was delayed indefinitely. For the convenience of the user, the added text is set forth as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(a) * * *

(7) Application or amendment requesting reaggregation of licenses pursuant to §1.950.

* * * * *

§ 1.931 Application for special temporary authority.

(a) *Wireless Telecommunications Services.* (1) In circumstances requiring immediate or temporary use of station in the Wireless Telecommunications Services, carriers may request special temporary authority (STA) to operate new or modified equipment. Such requests must be filed electronically using FCC Form 601 and must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA. Such requests should be filed in time to be received by the Commission at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. Requests received less than 10 days prior to the desired date of operation may be given expedited consideration only if compelling reasons are given for the delay in submitting the request. Otherwise, such late-filed requests are considered in turn, but action might not be taken prior to the desired date of operation. Requests for STA for operation of a station used in a Contraband Interdiction System, as defined in §1.9003, will be afforded expedited consideration if filed at least one day prior to the desired date of operation. Requests for STA must be accompanied by the proper filing fee.

(2) Grant without Public Notice. STA may be granted without being listed in a Public Notice, or prior to 30 days after such listing, if:

(i) The STA is to be valid for 30 days or less and the applicant does not plan to file an application for regular authorization of the subject operation;

(ii) The STA is to be valid for 60 days or less, pending the filing of an application for regular authorization of the subject operation;

(iii) The STA is to allow interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized;

(iv) The STA is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest; or

(v) The STA is for operation of a station used in a Contraband Interdiction System, as defined in §1.9003.

(3) Limit on STA term. The Commission may grant STA for a period not to exceed 180 days under the provisions of section 309(f) of the Communications Act of 1934, as amended, (47 U.S.C. 309(f)) if extraordinary circumstances so require, and pending the filing of an application for regular operation. The Commission may grant extensions of STA for a period of 180 days, but the applicant must show that extraordinary circumstances warrant such an extension.

(b) *Private Wireless Services.* (1) A licensee of, or an applicant for, a station in the Private Wireless Services may

request STA not to exceed 180 days for operation of a new station or operation of a licensed station in a manner which is beyond the scope of that authorized by the existing license. *See* §§1.933(d)(6) and 1.939. Where the applicant, seeking a waiver of the 180 day limit, requests STA to operate as a private mobile radio service provider for a period exceeding 180 days, evidence of frequency coordination is required. Requests for shorter periods do not require coordination and, if granted, will be authorized on a secondary, non-interference basis.

(2) STA may be granted in the following circumstances:

(i) In emergency situations;

(ii) To permit restoration or relocation of existing facilities to continue communication service;

(iii) To conduct tests to determine necessary data for the preparation of an application for regular authorization;

(iv) For a temporary, non-recurring service where a regular authorization is not appropriate;

(v) In other situations involving circumstances which are of such extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest.

(3) The nature of the circumstance which, in the opinion of the applicant justifies issuance of STA, must be fully described in the request. Applications for STA must be filed at least 10 days prior to the proposed operation. Applications filed less than 10 days prior to the proposed operation date will be accepted only upon a showing of good cause.

(4) The Commission may grant extensions of STA for a period of 180 days, but the applicant must show that extraordinary circumstances warrant such an extension.

(5) In special situations defined in §1.915(b)(1), a request for STA may be made by telephone or telegraph provided a properly signed application is filed within 10 days of such request.

(6) An applicant for an Aircraft Radio Station License may operate the radio station pending issuance of an Aircraft Radio Station License by the Commission for a period of 90 days under temporary operating authority, evidenced by a properly executed certification made on FCC Form 605.

(7) Unless the Commission otherwise prescribes, a person who has been granted an operator license of Novice, Technician, Technician Plus, General, or Advanced class and who has properly submitted to the administering VEs an application document for an operator license of a higher class, and who holds a CSCE indicating that he/she has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until final disposition of the application or until 365 days following the passing of the examination, whichever comes first.

(8) An applicant for a Ship Radio station license may operate the radio station pending issuance of the ship station authorization by the Commission for a period of 90 days, under a temporary operating authority, evidenced by a properly executed certification made on FCC Form 605.

(9) An applicant for a station license in the Industrial/Business pool (other than an applicant who seeks to provide commercial mobile radio service as defined in Part 20 of this chapter) utilizing an already authorized facility may operate the station for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on FCC Form 601, after filing an application for a station license together with evidence of frequency coordination, if required, with the Commission. The temporary operation of stations, other than mobile stations, within the Canadian coordination zone will be limited to stations with a maximum of 5 watts effective radiated power and a maximum antenna height of 20 feet (6.1 meters) above average terrain.

(10) An applicant for a radio station license under Part 90, Subpart S, of this chapter (other than an applicant who seeks to provide commercial mobile radio service as defined in part 20 of this chapter) to utilize an already existing Specialized Mobile Radio System (SMR) facility or to utilize an already licensed transmitter may operate the radio station for a period of up to 180 days, under a temporary permit.

Such request must be evidenced by a properly executed certification of FCC Form 601 after the filing of an application for station license, provided that the antenna employed by the control station is a maximum of 20 feet (6.1 meters) above a man-made structure (other than an antenna tower) to which it is affixed.

(11) An applicant for an itinerant station license, an applicant for a new private land mobile radio station license in the frequency bands below 470 MHz or in the 769–775/799–805 MHz, the 806–824/851–866 MHz band, or the one-way paging 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) or an applicant seeking to modify or acquire through assignment or transfer an existing station below 470 MHz or in the 769–775/799–805 MHz, the 806–824/851–866 MHz band, or the one-way paging 929–930 MHz band may operate the proposed station during the pendency of its application for a period of up to 180 days under a conditional permit. Conditional operations may commence upon the filing of a properly completed application that complies with § 90.127 if the application, when frequency coordination is required, is accompanied by evidence of frequency coordination in accordance with § 90.175 of this chapter. Operation under such a permit is evidenced by the properly executed Form 601 with certifications that satisfy the requirements of § 90.159(b).

(12) An applicant for a General Mobile Radio Service system license, sharing a multiple-licensed or cooperative shared base station used as a mobile relay station, may operate the system for a period of 180 days, under a Temporary Permit, evidenced by a properly executed certification made on FCC Form 605.

[63 FR 68928, Dec. 14, 1998, as amended at 76 FR 70909, Nov. 16, 2011; 82 FR 22759, May 18, 2017; 83 FR 61089, Nov. 27, 2018]

§ 1.933 Public notices.

(a) *Generally*. Periodically, the Commission issues Public Notices in the Wireless Radio Services listing information of public significance. Categories of Public Notice listings are as follows:

(1) *Accepted for filing*. Acceptance for filing of applications and major amendments thereto.

(2) *Actions*. Commission actions on pending applications previously listed as accepted for filing.

(3) *Environmental considerations*. Special environmental considerations as required by Part 1 of this chapter.

(4) *Informative listings*. Information that the Commission, in its discretion, believes to be of public significance. Such listings do not create any rights to file petitions to deny or other pleadings.

(b) *Accepted for filing public notices*. The Commission will issue at regular intervals public notices listing applications that have been received by the Commission in a condition acceptable for filing, or which have been returned to an applicant for correction. Any application that has been listed in a public notice as acceptable for filing and is (1) subject to a major amendment, or (2) has been returned as defective or incomplete and resubmitted to the Commission, shall be listed in a subsequent public notice. Acceptance for filing shall not preclude the subsequent dismissal of an application as defective.

(c) *Public notice prior to grant*. Applications for authorizations, major modifications, major amendments to applications, and substantial assignment or transfer applications for the following categories of stations and services shall be placed on Public Notice as accepted for filing prior to grant:

(1) Wireless Telecommunications Services.

(2) Industrial radiopositioning stations for which frequencies are assigned on an exclusive basis.

(3) Aeronautical enroute stations.

(4) Aeronautical advisory stations.

(5) Airport control tower stations.

(6) Aeronautical fixed stations.

(7) Alaska public fixed stations.

(8) Broadband Radio Service; and

(9) Educational Broadband Service.

(d) *No public notice prior to grant*. The following types of applications, notices, and other filings need not be placed on Public Notice as accepted for filing prior to grant:

(1) Applications or notifications concerning minor modifications to authorizations or minor amendments to applications.

(2) Applications or notifications concerning non-substantial (*pro forma*) assignments and transfers.

(3) Consent to an involuntary assignment or transfer under section 310(b) of the Communications Act.

(4) Applications for licenses under section 319(c) of the Communications Act.

(5) Requests for extensions of time to complete construction of authorized facilities.

(6) Requests for special temporary authorization not to exceed 30 days where the applicant does not contemplate the filing of an application for regular operation, or not to exceed 60 days pending or after the filing of an application for regular operation.

(7) Requests for emergency authorizations under section 308(a) of the Communications Act.

(8) Any application for temporary authorization under section 101.31(a) of this chapter.

(9) Any application for authorization in the Private Wireless Services.

[63 FR 68929, Dec. 14, 1998, as amended at 69 FR 72026, Dec. 10, 2004]

§ 1.934 Defective applications and dismissal.

(a) *Dismissal of applications*. The Commission may dismiss any application in the Wireless Radio Services at the request of the applicant; if the application is mutually exclusive with another application that is selected or granted in accordance with the rules in this part; for failure to prosecute or if the application is found to be defective; if the requested spectrum is not available; or if the application is untimely filed. Such dismissal may be ''without prejudice,'' meaning that the Commission may accept from the applicant another application for the same purpose at a later time, provided that the application is otherwise timely. Dismissal ''with prejudice'' means that the Commission will not accept another application from the applicant for the same purpose for a period of one year. Unless otherwise provided in this part, a dismissed application will not be returned to the applicant.

(1) *Dismissal at request of applicant*. Any applicant may request that its application be withdrawn or dismissed. A request for the withdrawal of an application after it has been listed on Public Notice as tentatively accepted for filing is considered to be a request for dismissal of that application without prejudice.

(i) If the applicant requests dismissal of its application with prejudice, the Commission will dismiss that application with prejudice.

(ii) If the applicant requests dismissal of its application without prejudice, the Commission will dismiss that application without prejudice, unless it is an application for which the applicant submitted the winning bid in a competitive bidding process.

(2) If an applicant who is a winning bidder for a license in a competitive bidding process requests dismissal of its short-form or long-form application, the Commission will dismiss that application with prejudice. The applicant will also be subject to default payments under Subpart Q of this part.

(b) *Dismissal of mutually exclusive applications not granted*. The Commission may dismiss mutually exclusive applications for which the applicant did not submit the winning bid in a competitive bidding process.

(c) *Dismissal for failure to prosecute*. The Commission may dismiss applications for failure of the applicant to prosecute or for failure of the applicant to respond substantially within a specified time period to official correspondence or requests for additional information. Such dismissal may be with prejudice in cases of non-compliance with § 1.945. The Commission may dismiss applications with prejudice for failure of the applicant to comply with requirements related to a competitive bidding process.

(d) *Dismissal as defective*. The Commission may dismiss without prejudice an application that it finds to be defective. An application is defective if:

(1) It is unsigned or incomplete with respect to required answers to questions, informational showings, or other matters of a formal character;

(2) It requests an authorization that would not comply with one or more of the Commission's rules and does not contain a request for waiver of these rule(s), or in the event the Commission denies such a waiver request, does not contain an alternative proposal that fully complies with the rules;

(3) The appropriate filing fee has not been paid; or

(4) The FCC Registration Number (FRN) has not been provided.

(5) It requests a vanity call sign and the applicant has pending another vanity call sign application with the same receipt date.

(e) *Dismissal because spectrum not available*. The Commission may dismiss applications that request spectrum which is unavailable because:

(1) It is not allocated for assignment in the specific service requested;

(2) It was previously assigned to another licensee on an exclusive basis or cannot be assigned to the applicant without causing harmful interference; or

(3) Reasonable efforts have been made to coordinate the proposed facility with foreign administrations under applicable international agreements, and an unfavorable response (harmful interference anticipated) has been received.

(f) *Dismissal as untimely*. The Commission may dismiss without prejudice applications that are premature or late filed, including applications filed prior to the opening date or after the closing date of a filing window, or after the cut-off date for a mutually exclusive application filing group.

(g) *Dismissal for failure to pursue environmental review*. The Commission may dismiss license applications (FCC Form 601) associated with proposed antenna structure(s) subject to §17.4(c) of this chapter, if pending more than 60 days and awaiting submission of an Environmental Assessment or other environmental information from the applicant, unless the applicant has provided an affirmative statement reflecting active pursuit during the previous 60 days of environmental review for the proposed antenna structure(s). To avoid potential dismissal of its license application, the license applicant must provide updates every 60 days unless or until the applicant has submitted the material requested by the Bureau.

[63 FR 68930, Dec. 14, 1998, as amended at 66 FR 47895, Sept. 14, 2001; 71 FR 66461, Nov. 15, 2006; 77 FR 3952, Jan. 26, 2012; 82 FR 41545, Sept. 1, 2017]

§ 1.935 Agreements to dismiss applications, amendments or pleadings.

Parties that have filed applications that are mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application(s), specific frequencies on the application or an amendment thereto, must obtain the approval of the Commission. Parties that have filed or threatened to file a petition to deny, informal objection or other pleading against an application and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the Commission.

(a) The party withdrawing or requesting dismissal of its application (or specific frequencies on the application), petition to deny, informal objection or other pleading or refraining from filing a pleading must submit to the Commission a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(1) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, or threat to file a pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to bona fide merger agreements;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, or threat to file a pleading.

(b) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(2) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(c) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or any other pleading against an application. For the purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the Commission.

(d) For the purposes of this section:

(1) Affidavits filed pursuant to this section must be executed by the filing party, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) Each application, petition to deny, informal objection or other pleading is deemed to be pending before the Commission from the time the petition to deny is filed with the Commission until such time as an order or correspondence of the Commission granting, denying or dismissing it is no longer subject to reconsideration by the Commission or to review by any court.

(3) ''Legitimate and prudent expenses'' are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(4) ''Other consideration'' consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(e) Notwithstanding the provisions of this section, any payments made or received in exchange for withdrawing a short-form application for a Commission authorization awarded through competitive bidding shall be subject to the restrictions set forth in §1.2105(c) of this chapter.

[63 FR 68931, Dec. 14, 1998]

§ 1.937 Repetitious or conflicting applications.

(a) Where the Commission has, for any reason, dismissed with prejudice or denied any license application in the Wireless Radio Services, or revoked any such license, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.

(b) [Reserved]

(c) If an appeal has been taken from the action of the Commission dismissing with prejudice or denying any application in the Wireless Radio Services, or if the application is subsequently designated for hearing, a like application for service of the same type to the same area, in whole or in part, filed by that applicant or by its successor or assignee, or on behalf or for the benefit of the parties in interest to the original application, will not be considered until the final disposition of such appeal.

(d) While an application is pending, any subsequent inconsistent or conflicting application submitted by, on behalf of, or for the benefit of the same applicant, its successor or assignee will not be accepted for filing.

[63 FR 68931, Dec. 14, 1998, as amended at 68 FR 25842, May 14, 2003]

§ 1.939 Petitions to deny.

(a) *Who may file.* Any party in interest may file with the Commission a petition to deny any application listed in a Public Notice as accepted for filing, whether as filed originally or upon major amendment as defined in § 1.929 of this part.

(1) For auctionable license applications, petitions to deny and related pleadings are governed by the procedures set forth in § 1.2108 of this part.

(2) Petitions to deny for non-auctionable applications that are subject to petitions under § 309(d) of the Communications Act must comply with the provisions of this section and must be filed no later than 30 days after the date of the Public Notice listing the application or major amendment to the application as accepted for filing.

(b) *Filing of petitions.* Petitions to deny and related pleadings must be filed electronically via ULS. Petitions to deny and related pleadings must reference the file number of the pending application that is the subject of the petition.

(c) *Service.* A petitioner shall serve a copy of its petition to deny on the applicant and on all other interested parties pursuant to § 1.47. Oppositions and replies shall be served on the petitioner and all other interested parties.

(d) *Content.* A petition to deny must contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof.

(e) *Petitions to deny amended applications.* Petitions to deny a major amendment to an application may raise only matters directly related to the major amendment that could not have been raised in connection with the application as originally filed. This paragraph does not apply to petitioners who gain standing because of the major amendment.

(f) *Oppositions and replies.* The applicant and any other interested party may file an opposition to any petition to deny and the petitioner may file a reply thereto in which allegations of fact or denials thereof, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof. Time for filing of oppositions and replies is governed by § 1.45 of this part for non-auctionable services and § 1.2108 of this part for auctionable services.

(g) *Dismissal of petition.* The Commission may dismiss any petition to deny that does not comply with the requirements of this section if the issues raised become moot, or if the petitioner or his/her attorney fails to appear at a settlement conference pursuant to § 1.956 of this part. The reasons for the dismissal will be stated in the dismissal letter or order. When a petition to deny is dismissed, any related responsive pleadings are also dismissed

(h) *Grant of petitioned application.* If a petition to deny has been filed and the Commission grants the application, the Commission will dismiss or deny the petition by issuing a concise statement of the reason(s) for dismissing or denying the petition, disposing of all substantive issues raised in the petition.

[63 FR 68931, Dec. 14, 1998, as amended at 64 FR 53240, Oct. 1, 1999; 70 FR 61058, Oct. 20, 2005; 71 FR 15619, Mar. 29, 2006; 74 FR 68544, Dec. 28, 2009; 85 FR 64405, Oct. 13, 2020; 85 FR 85530, Dec. 29, 2020]

§ 1.945 License grants.

(a) *License grants—auctionable license applications.* Procedures for grant of licenses that are subject to competitive bidding under section 309(j) of the Communications Act are set forth in §§ 1.2108 and 1.2109 of this part.

(b) *License grants—non-auctionable license applications.* No application that is not subject to competitive bidding under § 309(j) of the Communications Act will be granted by the Commission

prior to the 31st day following the issuance of a Public Notice of the acceptance for filing of such application or of any substantial amendment thereof, unless the application is not subject to §309(b) of the Communications Act.

(c) *Grant without hearing.* In the case of both auctionable license applications and non-mutually exclusive non-auctionable license applications, the Commission will grant the application without a hearing if it is proper upon its face and if the Commission finds from an examination of such application and supporting data, any pleading filed, or other matters which it may officially notice, that:

(1) There are no substantial and material questions of fact;

(2) The applicant is legally, technically, financially, and otherwise qualified;

(3) A grant of the application would not involve modification, revocation, or non-renewal of any other existing license;

(4) A grant of the application would not preclude the grant of any mutually exclusive application; and

(5) A grant of the application would serve the public interest, convenience, and necessity.

(d) *Grant of petitioned applications.* The FCC may grant, without a formal hearing, an application against which petition(s) to deny have been filed. If any petition(s) to deny are pending (*i.e.*, have not been dismissed or withdrawn by the petitioner) when an application is granted, the FCC will deny the petition(s) and issue a concise statement of the reason(s) for the denial, disposing of all substantive issues raised in the petitions.

(e) *Partial and conditional grants.* The FCC may grant applications in part, and/or subject to conditions other than those normally applied to authorizations of the same type. When the FCC does this, it will inform the applicant of the reasons therefor. Such partial or conditional grants are final unless the FCC revises its action in response to a petition for reconsideration. Such petitions for reconsideration must be filed by the applicant within thirty days after the date of the letter or order stating the reasons for the partial or conditional grant, and must reject the partial or conditional grant and return the instrument of authorization.

(f) *Designation for hearing.* If the Commission is unable to make the findings prescribed in subparagraph (c), it will formally designate the application for hearing on the grounds or reasons then obtaining and will notify the applicant and all other known parties in interest of such action.

(1) Orders designating applications for hearing will specify with particularity the matters in issue.

(2) Parties in interest, if any, who are not notified by the Commission of its action in designating a particular application for hearing may acquire the status of a party to the proceeding by filing a petition for intervention showing the basis of their interest not more than 30 days after publication in the FEDERAL REGISTER of the hearing issues or any substantial amendment thereto.

(3) The applicant and all other parties in interest shall be permitted to participate in any hearing subsequently held upon such applications. Hearings may be conducted by the Commission or by the Chief of the Wireless Telecommunications Bureau, or, in the case of a question which requires oral testimony for its resolution, an Administrative Law Judge. The burden of proceeding with the introduction of evidence and burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission or the Chief of the Wireless Telecommunications Bureau.

[63 FR 68932, Dec. 14, 1998]

§ 1.946 Construction and coverage requirements.

(a) *Construction and commencement of service requirements.* For each of the Wireless Radio Services, requirements for construction and commencement of service or commencement of operations are set forth in the rule part

governing the specific service. For purposes of this section, the period between the date of grant of an authorization and the date of required commencement of service or operations is referred to as the construction period.

(b) *Coverage and substantial service requirements.* In certain Wireless Radio Services, licensees must comply with geographic coverage requirements or substantial service requirements within a specified time period. These requirements are set forth in the rule part governing each specific service. For purposes of this section, the period between the date of grant of an authorization and the date that a particular degree of coverage or substantial service is required is referred to as the coverage period.

(c) *Termination of authorizations.* If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically (in whole or in part as set forth in the service rules), without specific Commission action, on the date the construction or coverage period expires.

(d) *Licensee notification of compliance.* A licensee who commences service or operations within the construction period or meets its coverage or substantial services obligations within the coverage period must notify the Commission by filing FCC Form 601. The notification must be filed within 15 days of the expiration of the applicable construction or coverage period. Where the authorization is site-specific, if service or operations have begun using some, but not all, of the authorized transmitters, the notification must show to which specific transmitters it applies.

(e) *Requests for extension of time.* Licensees may request to extend a construction period or coverage period by filing FCC Form 601. The request must be filed before the expiration of the construction or coverage period.

(1) An extension request may be granted if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.

(2) Extension requests will not be granted for failure to meet a construction or coverage deadline due to delays caused by a failure to obtain financing, to obtain an antenna site, or to order equipment in a timely manner. If the licensee orders equipment within 90 days of its initial license grant, a presumption of diligence is established.

(3) Extension requests will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization. The Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.

(4) The filing of an extension request does not automatically extend the construction or coverage period unless the request is based on involuntary loss of site or other circumstances beyond the licensee's control, in which case the construction period is automatically extended pending disposition of the extension request.

(5) A request for extension of time to construct a particular transmitter or other facility does not extend the construction period for other transmitters and facilities under the same authorization.

[63 FR 68933, Dec. 14, 1998, as amended at 69 FR 46397, Aug. 3, 2004; 71 FR 52749, Sept. 7, 2006; 72 FR 48842, Aug. 24, 2007]

§ 1.947 Modification of licenses.

(a) All major modifications, as defined in § 1.929 of this part, require prior Commission approval. Applications for major modifications also shall be treated as new applications for determination of filing date, Public Notice, and petition to deny purposes.

(b) Licensees may make minor modifications to station authorizations, as defined in § 1.929 (other than pro forma transfers and assignments), as a matter of right without prior Commission approval. Where other rules in this part permit licensees to make permissive changes to technical parameters without notifying the Commission (*e.g.*, adding, modifying, or deleting internal sites), no notification is required. For

all other types of minor modifications (*e.g.*, name, email or physical mailing address, point of contact changes), licensees must notify the Commission by filing FCC Form 601 within thirty (30) days of implementing any such changes.

(c) Multiple pending modification applications requesting changes to the same or related technical parameters on an authorization are not permitted. If a modification application is pending, any additional changes to the same or related technical parameters may be requested only in an amendment to the pending modification application.

(d) Any proposed modification that requires a fee as set forth at part 1, subpart G, of this chapter must be filed in accordance with § 1.913.

[63 FR 68933, Dec. 14, 1998, as amended at 64 FR 53240, Oct. 1, 1999; 85 FR 85530, Dec. 29, 2020]

§ 1.948 Assignment of authorization or transfer of control, notification of consummation.

(a) *General*. Except as provided in this section, authorizations in the Wireless Radio Services may be assigned by the licensee to another party, voluntarily or involuntarily, directly or indirectly, or the control of a licensee holding such authorizations may be transferred, only upon application to and approval by the Commission.

(b) *Limitations on transfers and assignments*. (1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(3) Designated Entities, as defined in § 1.2110(a) of this part, must comply with §§ 1.2110 and 1.2111 of this part when seeking to assign or transfer control of an authorization.

(4) Stations must meet all applicable requirements regarding transfers and assignments contained in the rules pertaining to the specific service in which the station is licensed.

(5) Licenses, permits, and authorizations for stations in the Amateur, Commercial Operator and Personal Radio Services (except 218–219 MHz Service) may not be assigned or transferred, unless otherwise stated.

(c) *Application required*. In the case of an assignment of authorization or transfer of control, the assignor must file an application for approval of the assignment on FCC Form 603. If the assignee or transferee is subject to the ownership reporting requirements of § 1.2112, the assignee or transferee must also file an updated FCC Form 602 or certify that a current FCC Form 602 is on file.

(1) In the case of a non-substantial (*pro forma*) transfer or assignment involving a telecommunications carrier, as defined in § 153(44) of the Communications Act, filing of the Form 603 and Commission approval in advance of the proposed transaction is not required, provided that:

(i) the affected license is not subject to unjust enrichment provisions under subpart Q of this part;

(ii) the transfer or assignment does not involve a proxy contest; and

(iii) the transferee or assignee provides notice of the transaction by filing FCC Form 603 within 30 days of its completion, and provides any necessary updates of ownership information on FCC Form 602.

(2) In the case of an involuntary assignment or transfer, FCC Form 603 must be filed no later than 30 days after the event causing the involuntary assignment or transfer.

(d) *Notification of consummation*. In all Wireless Radio Services, licensees are required to notify the Commission of consummation of an approved transfer or assignment using FCC Form 603. The assignee or transferee is responsible for providing this notification, including the date the transaction was consummated. For transfers and assignments that require prior Commission approval, the transaction must be consummated and notification provided to the Commission within 180 days of public notice of approval, and notification of consummation must occur no later than 30 days after actual consummation, unless a request for an extension of time to consummate is filed on FCC

Form 603 prior to the expiration of this 180-day period. For transfers and assignments that do not require prior Commission approval, notification of consummation must be provided on FCC Form 603 no later than 30 days after consummation, along with any necessary updates of ownership information on FCC Form 602.

(e) *Partial assignment of authorization.* If the authorization for some, but not all, of the facilities of a radio station in the Wireless Radio Services is assigned to another party, voluntarily or involuntarily, such action is a partial assignment of authorization. To request Commission approval of a partial assignment of authorization, the assignor must notify the Commission on FCC Form 603 of the facilities that will be deleted from its authorization upon consummation of the assignment.

(f) *Partitioning and disaggregation.* Where a licensee proposes to partition or disaggregate a portion of its authorization to another party, the application will be treated as a request for partial assignment of authorization. The assignor must notify the Commission on FCC Form 603 of the geographic area or spectrum that will be deleted from its authorization upon consummation of the assignment.

(g) *Involuntary transfer and assignment.* In the event of the death or legal disability of a permittee or licensee, a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee, the Commission shall be notified promptly of the occurrence of such death or legal disability. Within 30 days after the occurrence of such death or legal disability (except in the case of a ship or amateur station), an application shall be filed for consent to involuntary assignment of such permit or license, or for involuntary transfer of control of such corporation, to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved. The procedures and forms to be used are the same procedures and forms as those specified in paragraph (b) of this section. In the case of Ship, aircraft, Commercial Operator, Amateur, and Personal Radio Services (except for 218–219 MHz Service) involuntary assignment of licenses will not be granted; such licenses shall be surrendered for cancellation upon the death or legal disability of the licensee. Amateur station call signs assigned to the station of a deceased licensee shall be available for reassignment pursuant to § 97.19 of this chapter.

(h) *Disclosure requirements.* Applicants for transfer or assignment of licenses in auctionable services must comply with the disclosure requirements of §§ 1.2111 and 1.2112 of this part.

(i) *Trafficking.* Applications for approval of assignment or transfer may be reviewed by the Commission to determine if the transaction is for purposes of trafficking in service authorizations.

(1) Trafficking consists of obtaining or attempting to obtain an authorization for the principal purpose of speculation or profitable resale of the authorization rather than for the provision of telecommunication services to the public or for the licensee's own private use.

(2) The Commission may require submission of an affirmative, factual showing, supported by affidavit of persons with personal knowledge thereof, to demonstrate that the assignor did not acquire the authorization for the principal purpose of speculation or profitable resale of the authorization. This showing may include, for example, a demonstration that the proposed assignment is due to changed circumstances (described in detail) affecting the licensee after the grant of the authorization, or that the proposed assignment is incidental to a sale of other facilities or a merger of interests.

(j) *Processing of applications.* Applications for assignment of authorization or transfer of control relating to the Wireless Radio Services will be processed pursuant either to general approval procedures or the immediate approval procedures, as discussed herein.

(1) *General approval procedures.* Applications will be processed pursuant to the general approval procedures set forth in this paragraph unless they are submitted and qualify for the immediate approval procedures set forth in paragraph (j)(2) of this section.

(i) To be accepted for filing under these general approval procedures, the application must be sufficiently complete and contain all necessary information and certifications requested on the applicable form, FCC Form 603, including any information and certifications (including those of the proposed assignee or transferee relating to eligibility, basic qualifications, and foreign ownership) required by the rules of this chapter and any rules pertaining to the specific service for which the application is filed, and must include payment of the required application fee(s) (*see* §1.1102).

(ii) Once accepted for filing, the application will be placed on public notice, except no prior public notice will be required for applications involving authorizations in the Private Wireless Services, as specified in §1.933(d)(9).

(iii) Petitions to deny filed in accordance with section 309(d) of the Communications Act must comply with the provisions of §1.939, except that such petitions must be filed no later than 14 days following the date of the public notice listing the application as accepted for filing.

(iv) No later than 21 days following the date of the public notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will affirmatively consent to the application, deny the application, or determine to subject the application to further review. For applications for which no prior public notice is required, the Bureau will affirmatively consent to the application, deny the application, or determine to subject the application to further review no later than 21 days following the date on which the application has been filed, if filed electronically, and any required application fee has been paid (*see* §1.1102); if filed manually, the Bureau will affirmatively consent to the application, deny the application, or determine to subject the application to further review no later than 21 days after the necessary data in the manually filed application is entered into ULS.

(v) If the Bureau determines to subject the application to further review, it will issue a public notice so indicating. Within 90 days following the date of that public notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

(vi) Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(vii) Grant of consent to the application will be reflected in a public notice (see §1.933(a)) promptly issued after the grant.

(viii) If any petition to deny is filed, and the Bureau grants the application, the Bureau will deny the petition(s) and issue a concise statement of the reason(s) for denial, disposing of all substantive issues raised in the petition(s).

(2) *Immediate approval procedures.* Applications that meet the requirements of paragraph (j)(2)(i) of this section qualify for the immediate approval procedures.

(i) To qualify for the immediate approval procedures, the application must be sufficiently complete, contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership), and include payment of the requisite application fee(s), as required for an application processed under the general approval procedures set forth in paragraph (j)(1) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum licensed in a Wireless Radio Service that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if assigned or transferred, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service) in which the proposed assignee or transferee already holds a direct or indirect interest of 10% or more (*see* §1.2112), either as a licensee or a spectrum lessee, and that could be used by the assignee or transferee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (*see* §§1.2110 and

1.2111, and §§ 24.709, 24.714, and 24.839 of this chapter); and,

(C) The assignment or transfer of control does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules, and there is no pending issue as to whether the license is subject to revocation, cancellation, or termination by the Commission.

(ii) Provided that the application establishes that it meets all of the requisite elements to qualify for these immediate approval procedures, consent to the assignment or transfer of control will be reflected in ULS. If the application is filed electronically, consent will be reflected in ULS on the next business day after the filing of the application; if filed manually, consent will be reflected in ULS on the next business day after the necessary data in the manually filed application is entered into ULS. Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(iii) Grant of consent to the application under these immediate approval procedures will be reflected in a public notice (*see* § 1.933(a)) promptly issued after the grant, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

[63 FR 68933, Dec. 14, 1998, as amended at 64 FR 62120, Nov. 16, 1999; 68 FR 42995, July 21, 2003; 68 FR 66276, Nov. 25, 2003; 69 FR 77549, Dec. 27, 2004; 69 FR 77944, Dec. 29, 2004; 76 FR 17349, Mar. 29, 2011; 81 FR 90745, Dec. 15, 2015]

EFFECTIVE DATE NOTES: 1. At 69 FR 77549, Dec. 27, 2004, § 1.948(j)(2) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 87 FR 57415, Sept. 20, 2022, § 1.948 was amended by revising paragraph (j), effective Oct. 20, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 1.948 Assignment of authorization or transfer of control, notification of consummation.

* * * * *

(j) *Processing of applications.* Applications for assignment of authorization or transfer of control relating to the Wireless Radio Services will be processed pursuant either to general approval procedures or the immediate approval procedures, as discussed in this paragraph (j).

(1) *General approval procedures.* Applications will be processed pursuant to the general approval procedures set forth in this paragraph unless they are submitted and qualify for the immediate approval procedures set forth in paragraph (j)(2) of this section.

(i) To be accepted for filing under these general approval procedures, the application must be sufficiently complete and contain all necessary information and certifications requested on the applicable form, FCC Form 603, including any information and certifications (including those of the proposed assignee or transferee relating to eligibility, basic qualifications, and foreign ownership) required by the rules of this chapter and any rules pertaining to the specific service for which the application is filed, and must include payment of the required application fee(s) (see § 1.1102).

(ii) Once accepted for filing, the application will be placed on public notice, except no prior public notice will be required for applications involving authorizations in the Private Wireless Services, as specified in § 1.933(d)(9).

(iii) Petitions to deny filed in accordance with section 309(d) of the Communications Act must comply with the provisions of § 1.939, except that such petitions must be filed no later than 14 days following the date of the public notice listing the application as accepted for filing.

(iv) No later than 21 days following the date of the public notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will affirmatively consent to the application, deny the application, or determine to subject the application to further review. For applications for which no prior public notice is required, the Bureau will affirmatively consent to the application, deny the application, or determine to subject the application to further review no later than 21 days following the date on which the application has been filed, if filed electronically, and any required application fee has been paid (see § 1.1102); if filed manually, the Bureau will affirmatively consent to the application, deny the application, or determine to subject the application to further review no later than 21 days after the necessary data in the manually filed application is entered into ULS.

(v) If the Bureau determines to subject the application to further review, it will issue a public notice so indicating. Within 90 days following the date of that public notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

(vi) Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(vii) Grant of consent to the application will be reflected in a public notice (see §1.933(a)) promptly issued after the grant.

(viii) If any petition to deny is filed, and the Bureau grants the application, the Bureau will deny the petition(s) and issue a concise statement of the reason(s) for denial, disposing of all substantive issues raised in the petition(s).

(2) *Immediate approval procedures.* Applications that meet the requirements of paragraph (j)(2)(i) of this section qualify for the immediate approval procedures.

(i) To qualify for the immediate approval procedures, the application must be sufficiently complete, contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership), and include payment of the requisite application fee(s), as required for an application processed under the general approval procedures set forth in paragraph (j)(1) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum licensed in a Wireless Radio Service that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if assigned or transferred, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service) in which the proposed assignee or transferee already holds a direct or indirect interest of 10% or more (see §1.2112), either as a licensee or a spectrum lessee, and that could be used by the assignee or transferee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (see §§1.2110, and 1.2111 and §§24.709, 24.714, and 24.839 of this chapter);

(C) The assignment or transfer of control does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules in this chapter, and there is no pending issue as to whether the license is subject to revocation, cancellation, or termination by the Commission; and

(D) The assignment application does not involve a transaction in the Enhanced Competition Incentive Program (see subpart EE of this part).

(ii) Provided that the application establishes that it meets all of the requisite elements to qualify for these immediate approval procedures, consent to the assignment or transfer of control will be reflected in ULS. If the application is filed electronically, consent will be reflected in ULS on the next business day after the filing of the application; if filed manually, consent will be reflected in ULS on the next business day after the necessary data in the manually filed application is entered into ULS. Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(iii) Grant of consent to the application under these immediate approval procedures will be reflected in a public notice (see §1.933(a)) promptly issued after the grant, and is subject to reconsideration (see §§1.106(f), 1.108, and 1.113).

§ 1.949 Application for renewal of authorization.

(a) *Filing requirements.* Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization, and no sooner than 90 days prior to the expiration date. Renewal applications must be filed on the same form as applications for initial authorization in the same service, *i.e.*, FCC Form 601 or 605.

(b) *Common expiration date.* Licensees with multiple authorizations in the same service may request a common date on which such authorizations expire for renewal purposes. License terms may be shortened by up to one year but will not be extended.

(c) *Implementation.* Covered Site-based Licenses, except Common Carrier Fixed Point-to-Point Microwave Service (part 101, subpart I, of this chapter), and Covered Geographic Licenses in the 600 MHz Service (part 27, subpart N, of this chapter); 700 MHz Commercial Services (part 27, subpart F); Advanced Wireless Services (part 27, subpart L) (AWS–3 (1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz) and AWS–4 (2000–2020 MHz and 2180–2200 MHz) only); Citizens Broadband Radio Service (part 96, subpart C, of this chapter); and H Block Service (part 27, subpart K) must comply with paragraphs (d) through (h) of this section. All other Covered Geographic Licenses must comply with paragraphs (d) through (h) of this section beginning on January 1, 2023. Common Carrier Fixed Point-to-Point Microwave Service (part 101, subpart I) must comply with paragraphs (d) through (h) of this section beginning on October 1, 2018.

(d) *Renewal Standard.* An applicant for renewal of an authorization of a

Covered Site-based License or a Covered Geographic License must demonstrate that over the course of the license term, the licensee(s) provided and continue to provide service to the public, or operated and continue to operate the license to meet the licensee(s)' private, internal communications needs.

(e) *Safe harbors.* An applicant for renewal will meet the Renewal Standard if it can certify that it has satisfied the requirements of one of the following safe harbors:

(1) *Covered Site-based Licenses.* (i) The applicant must certify that it is continuing to operate consistent with its most recently filed construction notification (or most recent authorization, when no construction notification is required).

(ii) The applicant must certify that no permanent discontinuance of service occurred during the license term. This safe harbor may be used by any Covered Site-based License.

(2) *Geographic licenses—commercial service.* (i) For an applicant in its initial license term with an interim performance requirement, the applicant must certify that it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement, the applicant continues to use its facilities to provide at least the level of service required by its interim performance requirement; and the licensee has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term. For an applicant in its initial license term with no interim performance requirement, the applicant must certify that it has met its final performance requirement and continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of the license term. For an applicant in any subsequent license term, the applicant must certify that it continues to use its facilities to provide at least the level of service required by its final performance requirement through the end of any subsequent license terms.

(ii) The applicant must certify that no permanent discontinuance of service occurred during the license term. This safe harbor may be used by any Covered Geographic License.

(3) *Geographic licenses—private systems.* (i) For an applicant in its initial license term with an interim performance requirement, the applicant must certify that it has met its interim performance requirement and that over the portion of the license term following the interim performance requirement, the applicant continues to use its facilities to further the applicant's private business or public interest/public safety needs at or above the level required to meet its interim performance requirement; and the applicant has met its final performance requirement and continues to use its facilities to provide at least the level of operation required by its final performance requirement through the end of the license term. For an applicant in its initial license term with no interim performance requirement, the applicant must certify that it has met its final performance requirement and continues to use its facilities to provide at least the level of operation required by its final performance requirement through the end of the license term. For an applicant in any subsequent license term, the applicant must certify that it continues to use its facilities to further the applicant's private business or public interest/public safety needs at or above the level required to meet its final performance requirement.

(ii) The applicant must certify that no permanent discontinuance of operation occurred during the license term. This safe harbor may be used by any Covered Geographic License.

(4) *Partitioned or disaggregated license without a performance requirement.* (i) The applicant must certify that it continues to use its facilities to provide service or to further the applicant's private business or public interest/public safety needs.

(ii) The applicant must certify that no permanent discontinuance of service occurred during the license term. This safe harbor may be used by any Covered Geographic License.

(f) *Renewal Showing*. If an applicant for renewal cannot meet the Renewal Standard in paragraph (d) of this section by satisfying the requirements of one of the safe harbors in paragraph (e) of this section, it must make a Renewal Showing, independent of its performance requirements, as a condition of renewal. The Renewal Showing must specifically address the Renewal Standard by including a detailed description of the applicant's provision of service (or, when allowed under the relevant service rules or pursuant to waiver, use of the spectrum for private, internal communication) during the entire license period and address, as applicable:

(1) The level and quality of service provided by the applicant (*e.g.*, the population served, the area served, the number of subscribers, the services offered);

(2) The date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;

(3) The extent to which service is provided to rural areas;

(4) The extent to which service is provided to qualifying tribal land as defined in §1.2110(e)(3)(i) of this chapter; and

(5) Any other factors associated with the level of service to the public.

(g) *Regulatory Compliance Certification*. An applicant for renewal of an authorization in the Wireless Radio Services identified in paragraph (d) of this section must make a Regulatory Compliance Certification certifying that it has substantially complied with all applicable FCC rules, policies, and the Communications Act of 1934, as amended.

(h) *Consequences of denial*. If the Commission, or the Wireless Telecommunications Bureau acting under delegated authority, finds that a licensee has not met the Renewal Standard under paragraph (d) of this section, or that its Regulatory Compliance Certification under paragraph (g) of this section is insufficient, its renewal application will be denied, and its licensed spectrum will return automatically to the Commission for reassignment (by auction or other mechanism). In the case of certain services licensed site-by-site, the spectrum will revert automatically to the holder of the related overlay geographic-area license. To the extent that an AWS–4 licensee also holds the 2 GHz Mobile Satellite Service (MSS) rights for the affected license area, the MSS protection rule in §27.1136 of this chapter will no longer apply in that license area.

[82 FR 41545, Sept. 1, 2017, as amended at 83 FR 63095, Dec. 7, 2018]

§1.950 Geographic partitioning and spectrum disaggregation.

(a) *Definitions*. The terms ''county and county equivalent,'' ''geographic partitioning,'' and ''spectrum disaggregation'' as used in this section are defined as follows:

(1) *County and county equivalent*. The terms county and county equivalent as used in this part are defined by Federal Information Processing Standards (FIPS) 6–4, which provides the names and codes that represent the counties and other entities treated as equivalent legal and/or statistical subdivisions of the 50 States, the District of Columbia, and the possessions and freely associated areas of the United States. Counties are the ''first-order subdivisions'' of each State and statistically equivalent entity, regardless of their local designations (county, parish, borough, etc.). Thus, the following entities are equivalent to counties for legal and/or statistical purposes: The parishes of Louisiana; the boroughs and census areas of Alaska; the District of Columbia; the independent cities of Maryland, Missouri, Nevada, and Virginia; that part of Yellowstone National Park in Montana; and various entities in the possessions and associated areas. The FIPS codes and FIPS code documentation are available online at *http://www.itl.nist.gov/fipspubs/index.htm*.

(2) *Geographic partitioning*. Geographic partitioning is the assignment of a geographic portion of a geographic area licensee's license area.

(3) *Spectrum disaggregation*. Spectrum disaggregation is the assignment of portions of blocks of a geographic area licensee's spectrum.

(b) *Eligibility*. Covered Geographic Licenses are eligible for geographic partitioning and spectrum disaggregation.

(1) *Geographic partitioning*. An eligible licensee may partition any geographic portion of its license area, at any time following grant of its license, subject to the following exceptions:

(i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.

(ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.

(iii) Multichannel Video & Distribution and Data Service licensees are only permitted to partition licensed geographic areas along county borders (Parishes in Louisiana or Territories in Alaska).

(2) *Spectrum disaggregation*. An eligible licensee may disaggregate spectrum in any amount, at any time following grant of its license to eligible entities, subject to the following exceptions:

(i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.

(ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.

(iii) VHF Public Coast (156–162 MHz) spectrum may only be disaggregated in frequency pairs, except that the ship and coast transmit frequencies comprising Channel 87 (see § 80.371(c) of this chapter) may be disaggregated separately.

(iv) Disaggregation is not permitted in the Multichannel Video & Distribution and Data Service 12.2–12.7 GHz band.

(c) *Filing requirements*. Parties seeking approval for geographic partitioning, spectrum disaggregation, or a combination of both must apply for a partial assignment of authorization by filing FCC Form 603 pursuant to § 1.948. Each request for geographic partitioning must include an attachment defining the perimeter of the partitioned area by geographic coordinates to the nearest second of latitude and longitude, based upon the 1983 North American Datum (NAD83). Alternatively, applicants may specify an FCC-recognized service area (*e.g.*, Basic Trading Area, Economic Area, Major Trading Area, Metropolitan Service Area, or Rural Service Area), county, or county equivalent, in which case, applicants need only list the specific FCC-recognized service area, county, or county equivalent names comprising the partitioned area.

(d) *Relocation of incumbent licensees*. Applicants for geographic partitioning, spectrum disaggregation, or a combination of both must, if applicable, include a certification with their partial assignment of authorization application stating which party will meet any incumbent relocation requirements, except as otherwise stated in service-specific rules.

(e) *License term*. The license term for a partitioned license area or disaggregated spectrum license is the remainder of the original licensee's license term.

(f) *Frequency coordination*. Any existing frequency coordination agreements convey with the partial assignment of authorization for geographic partitioning, spectrum disaggregation, or a combination of both, and shall remain in effect for the term of the agreement unless new agreements are reached.

(g) *Performance requirements*. Parties to geographic partitioning, spectrum disaggregation, or a combination of both, have two options to satisfy service-specific performance requirements (*i.e.*, construction and operation requirements). Under the first option, each party may certify that it will individually satisfy any service-specific requirements and, upon failure, must individually face any service-specific performance penalties. Under the second option, both parties may agree to share responsibility for any service-specific requirements. Upon failure to meet their shared service-specific performance requirements, both parties will be subject to any service-specific penalties.

(h) *Unjust enrichment*. Licensees making installment payments or that received a bidding credit, that partition their licenses or disaggregate their spectrum to entities that do not meet the eligibility standards for installment payments or bidding credits, are subject to the unjust enrichment requirements of § 1.2111.

[82 FR 41546, Sept. 1, 2017]

EFFECTIVE DATE NOTE: At 87 FR 57416, Sept. 20, 2022, § 1.950 was amended by revising the section heading, adding paragraphs (a)(4) and (b)(3), revising the heading of paragraph (c) and paragraph (e), and adding paragraph

(i). These actions were delayed indefinitely. For the convenience of the user, the added and revised text is set forth as follows:

§ 1.950 Geographic partitioning, spectrum disaggregation, and reaggregation.

(a) * * *

(4) *Reaggregation*. Reaggregation is the consolidation into a single license of two or more licenses previously disaggregated and/or partitioned.

(b) * * *

(3) *Reaggregation*. An eligible licensee may reaggregate its covered geographic license(s), provided the requirements of paragraph (i) of this section are met, and subject to the following exceptions:

(i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.

(ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.

(c) *Partitioning and disaggregation filing requirements*. * * *

* * * * *

(e) *License term*. The license term for a partitioned license or a disaggregated spectrum license is the remainder of the original licensee's license term. The license term for a reaggregated license is the remainder of the license term of the license with the earliest expiration date of those included in the underlying reaggregation application.

* * * * *

(i) *Reaggregation of licenses*. A licensee may apply to reaggregate two or more licenses that were previously disaggregated or partitioned pursuant to this section. Licenses may be reaggregated in any combination up to, but not exceeding, the original geographic size and/or spectrum band(s) for the type of Wireless Radio Service license at issue (*i.e.*, a licensee may, but is not required, to reaggregate all licenses which were once part of the original license).

(1) *Prerequisites for reaggregation*. Licenses will only be eligible for reaggregation if they meet the following requirements:

(i) All licenses to be reaggregated must be of the same radio service, and have the same market and channel block;

(ii) Each license to be reaggregated must have met all applicable performance requirements, including any interim and final requirements, prior to the filing of the reaggregation application;

(iii) Each license to be reaggregated must have been renewed for at least one license term since the applicable performance requirements were met; and

(iv) None of the licenses for which an applicant seeks reaggregation have violated the Commission's permanent discontinuance rules, as applicable to that license.

(2) *Filing requirements for reaggregation*. Parties seeking approval for reaggregation must apply by filing a major modification application using FCC Form 601 that complies with the filing requirements described in §§ 1.913, 1.929, and 1.947, and that includes the following attachments:

(i) A certification that the licenses meet the requirements of paragraphs (i)(1)(i) through (iv) of this section;

(ii) An electronic map and table that together identify all licenses and spectrum to be aggregated and identify the composite license requested;

(iii) A certification that all licenses in the reaggregation request are active under the same FCC Registration Number at the time of filing;

(iv) A per-license list of all special conditions and a statement acknowledging that the listed special conditions will continue to apply only to that portion of the reaggregated license with respect to the spectrum and/or geography at issue, as if the license had not been reaggregated; and

(v) A per-license list of all waivers granted and a statement of understanding that the listed waiver(s) do not automatically convey to any other portion of the reaggregated license. If applicable, the applicant shall include a statement indicating that it is seeking waiver relief through a separately filed waiver request seeking to expand the scope of previously granted relief.

§ 1.951 Duty to respond to official communications.

Licensees or applicants in the Wireless Radio Services receiving official notice of an apparent or actual violation of a federal statute, international agreement, Executive Order, or regulation pertaining to communications shall respond in writing within 10 days to the office of the FCC originating the notice, unless otherwise specified. Responses to official communications must be complete and self-contained without reference to other communications unless copies of such other communications are attached to the response. Licensees or applicants may respond via ULS.

[63 FR 68934, Dec. 14, 1998]

§ 1.953 Discontinuance of service or operations.

(a) *Termination of authorization.* A licensee's authorization will automatically terminate, without specific Commission action, if the licensee permanently discontinues service or operations under the license during the license term. A licensee is subject to this provision commencing on the date it is required to be providing service or operating.

(b) *180-day Rule for Geographic Licenses.* Permanent discontinuance of service or operations for Covered Geographic Licenses is defined as 180 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee.

(c) *365-day Rule for Site-based Licenses.* Permanent discontinuance of service or operations for Covered Site-based Licenses is defined as 365 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

(d) *365-day Rule for public safety licenses.* Permanent discontinuance of operations is defined as 365 consecutive days during which a licensee does not operate. This 365-day rule applies to public safety licenses issued based on the applicant demonstrating eligibility under § 90.20 or § 90.529 of this chapter, or public safety licenses issued in conjunction with a waiver pursuant to section 337 of the Communications Act.

(e) *Channel keepers.* Operation of channel keepers (devices that transmit test signals, tones, color bars, or some combination of these, for example) does not constitute operation or service for the purposes of this section.

(f) *Filing requirements.* A licensee that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service or operations are permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

(g) *Extension request.* A licensee may file a request for a longer discontinuance period for good cause. An extension request must be filed at least 30 days before the end of the applicable 180-day or 365-day discontinuance period. The filing of an extension request will automatically extend the discontinuance period a minimum of the later of an additional 30 days or the date upon which the Wireless Telecommunications Bureau acts on the request.

[82 FR 41547, Sept. 1, 2017]

§ 1.955 Termination of authorizations.

(a) Authorizations in general remain valid until terminated in accordance with this section, except that the Commission may revoke an authorization pursuant to section 312 of the Communications Act of 1934, as amended. *See* 47 U.S.C. 312.

(1) *Expiration.* Authorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed. *See* § 1.949 of this part. No authorization granted under the provisions of this part shall be for a term longer than ten years, except to the extent a longer term is authorized under § 27.13 of part 27 of this chapter.

(2) *Failure to meet construction or coverage requirements.* Authorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements. *See* § 1.946(c).

(3) *Service discontinued.* Authorizations automatically terminate, without specific Commission action, if service or operations are permanently discontinued. See § 1.953.

(b) Special temporary authority (STA) automatically terminates without specific Commission action upon failure to comply with the terms and conditions therein, or at the end of the period specified therein, unless a timely request for an extension of the STA

term is filed in accordance with § 1.931 of this part. If a timely filed request for extension of the STA term is dismissed or denied, the STA automatically terminates, without specific Commission action, on the day after the applicant or the applicant's attorney is notified of the Commission's action dismissing or denying the request for extension.

(c) Authorizations submitted by licensees for cancellation terminate when the Commission gives Public Notice of such action.

[63 FR 68934, Dec. 14, 1998, as amended at 64 FR 53240, Oct. 1, 1999; 70 FR 61058, Oct. 20, 2005; 72 FR 27708, May 16, 2007; 72 FR 48843, Aug. 24, 2007; 82 FR 41547, Sept. 1, 2017]

EDITORIAL NOTE: At 64 FR 53240, Oct. 1, 1999, § 1.955 was amended by revising the last sentence of paragraph (b)(2) to read ''*See* § 1.946(c) of this part.'', effective Nov. 30, 1999. However, paragraph (b)(2) does not exist in the 1998 volume.

§ 1.956 Settlement conferences.

Parties are encouraged to use alternative dispute resolution procedures to settle disputes. *See* subpart E of this part. In any contested proceeding, the Commission, in its discretion, may direct the parties or their attorneys to appear before it for a conference.

(a) The purposes of such conferences are:

(1) To obtain admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(2) To consider the necessity for or desirability of amendments to the pleadings, or of additional pleadings or evidentiary submissions;

(3) To consider simplification or narrowing of the issues;

(4) To encourage settlement of the matters in controversy by agreement between the parties; and

(5) To consider other matters that may aid in the resolution of the contested proceeding.

(b) Conferences are scheduled by the Commission at a time and place it may designate, to be conducted in person or by telephone conference call.

(c) The failure of any party or attorney, following reasonable notice, to appear at a scheduled conference will be deemed a failure to prosecute, subjecting that party's application or petition to dismissal by the Commission.

[63 FR 68935, Dec. 14, 1998]

§ 1.957 Procedure with respect to amateur radio operator license.

Each candidate for an amateur radio license which requires the applicant to pass one or more examination elements must present the Volunteer Examiners (VEs) with a properly completed FCC Form 605 prior to the examination. Upon completion of the examination, the VEs will grade the test papers. If the applicant is successful, the VEs will forward the candidate's application to a Volunteer-Examiner Coordinator (VEC). The VEs will then issue a certificate for sucessful completion of an amateur radio operator examination. The VEC will forward the application to the Commission's Gettysburg, Pennsylvania, facility.

[63 FR 68935, Dec. 14, 1998]

§ 1.958 Distance computation.

The method given in this section must be used to compute the distance between any two locations, except that, for computation of distance involving stations in Canada and Mexico, methods for distance computation specified in the applicable international agreement, if any, must be used instead. The result of a distance calculation under parts 21 and 101 of this chapter must be rounded to the nearest tenth of a kilometer. The method set forth in this paragraph is considered to be sufficiently accurate for distances not exceeding 475 km (295 miles).

(a) Convert the latitudes and longitudes of each reference point from degree-minute-second format to degree-decimal format by dividing minutes by 60 and seconds by 3600, then adding the results to degrees.

$$\mathrm{LATX}_{dd} = \mathrm{DD} + \frac{\mathrm{MM}}{60} + \frac{\mathrm{SS}}{3600}$$

$$\mathrm{LONX}_{dd} = \mathrm{DDD} + \frac{\mathrm{MM}}{60} + \frac{\mathrm{SS}}{3600}$$

(b) Calculate the mean geodetic latitude between the two reference points by averaging the two latitudes:

$$ML = \frac{LAT1_{dd} + LAT2_{dd}}{2}$$

(c) Calculate the number of kilometers per degree latitude difference for the mean geodetic latitude calculated in paragraph (b) of this section as follows:

KPD_{lat} = 111.13209 − 0.56605 cos 2ML + 0.00120 cos 4ML

(d) Calculate the number of kilometers per degree of longitude difference for the mean geodetic latitude calculated in paragraph (b) of this section as follows:

KPD_{lon} = 111.41513 cos ML − 0.09455 cos 3ML + 0.00012 cos 5ML

(e) Calculate the North-South distance in kilometers as follows:

$NS = KPD_{lat} \times (LAT1_{dd} - LAT2_{dd})$

(f) Calculate the East-West distance in kilometers as follows:

$EW = KPD_{lon} \times (LON1_{dd} - LON2_{dd})$

(g) Calculate the distance between the locations by taking the square root of the sum of the squares of the East-West and North-South distances:

$$DIST = \sqrt{NS^2 + EW^2}$$

(h) Terms used in this section are defined as follows:

(1) $LAT1_{dd}$ and $LON1_{dd}$ are the coordinates of the first location in degree-decimal format.

(2) $LAT2_{dd}$ and $LON2_{dd}$ are the coordinates of the second location in degree-decimal format.

(3) ML is the mean geodetic latitude in degree-decimal format.

(4) KPD_{lat} is the number of kilometers per degree of latitude at a given mean geodetic latitude.

(5) KPD_{lon} is the number of kilometers per degree of longitude at a given mean geodetic latitude.

(6) NS is the North-South distance in kilometers.

(7) EW is the East-West distance in kilometers.

(8) DIST is the distance between the two locations, in kilometers.

[70 FR 19306, Apr. 13, 2005, as amended at 79 FR 72150, Dec. 5, 2014]

§ 1.959 Computation of average terrain elevation.

Except as otherwise specified in § 90.309(a)(4) of this chapter, average terrain elevation must be calculated by computer using elevations from a 30 second point or better topographic data file. The file must be identified. If a 30 second point data file is used, the elevation data must be processed for intermediate points using interpolation techniques; otherwise, the nearest point may be used. In cases of dispute, average terrain elevation determinations can also be done manually, if the results differ significantly from the computer derived averages.

(a) Radial average terrain elevation is calculated as the average of the elevation along a straight line path from 3 to 16 kilometers (2 and 10 miles) extending radially from the antenna site. If a portion of the radial path extends over foreign territory or water, such portion must not be included in the computation of average elevation unless the radial path again passes over United States land between 16 and 134 kilometers (10 and 83 miles) away from the station. At least 50 evenly spaced data points for each radial should be used in the computation.

(b) Average terrain elevation is the average of the eight radial average terrain elevations (for the eight cardinal radials).

(c) For locations in Dade and Broward Counties, Florida, the method prescribed above may be used or average terrain elevation may be assumed to be 3 meters (10 feet).

[70 FR 19306, Apr. 13, 2005]

REPORTS TO BE FILED WITH THE COMMISSION

§ 1.981 Reports, annual and semi-annual.

Where required by the particular service rules, licensees who have entered into agreements with other persons for the cooperative use of radio station facilities must submit annually an audited financial statement reflecting the nonprofit cost-sharing nature of the arrangement to the Commission's offices in Washington, DC or alternatively may be sent to the Commission electronically via the ULS, no

later than three months after the close of the licensee's fiscal year.

[78 FR 25160, Apr. 29, 2013]

Subpart G—Schedule of Statutory Charges and Procedures for Payment

SOURCE: 52 FR 5289, Feb. 20, 1987, unless otherwise noted.

§ 1.1101 Authority.

Authority to impose and collect these charges is contained in section 8 of the Communications Act, as amended by sections 102 and 103 of title I of the Consolidated Appropriations Act of 2018 (Pub. L. 115–141, 132 Stat. 1084), 47 U.S.C. 158, which directs the Commission to assess and collect application fees to recover the costs of the Commission to process applications.

[86 FR 15061, Mar. 19, 2021]

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

(a) In tables to this section, the amounts appearing in the column labeled ''Fee Amount'' are for application fees only. Certain services, as indicated in the table below, also have associated regulatory fees that must be paid at the same time the application fee is paid. For more information on the associated regulatory fees, please refer to the most recent Wireless Telecommunications Bureau Fee Filing Guide for the corresponding regulatory fee amount located at *https://www.fcc.gov/licensing-databases/fees/application-processing-fees*. For additional guidance, please refer to § 1.1152 of this chapter. Application fee payments can be made electronically using the Commission's Universal Licensing System (ULS). Remit manual filings and/or payments for these services to: Federal Communications Commission, Wireless Bureau Applications, P.O. Box 979097, St. Louis, MO 63197–9000.

(b) Site-based licensed services are services for which an applicant's initial application for authorization generally provides the exact technical parameters of its planned operations (such as transmitter location, area of operation, desired frequency(s)/band(s), power levels). Site-based licensed services include land mobile systems (one or more base stations communicating with mobile devices, or mobile-only systems), point-to-point systems (two stations using a spectrum band to form a data communications path), point-to-multipoint systems (one or more base stations that communicate with fixed remote units), as well as radiolocation and radionavigation systems. Examples of these licenses include, but are not limited to, the Industrial/Business Pool, Trunked licenses and Microwave Industrial/Business Pool licenses.

TABLE 1 TO PARAGRAPH (b)

Site-based license applications	New fee
New license, major modification	$95.
Extension Requests	$50.
Special temporary authority	$135.
Assignment/transfer of control, initial call sign	$50.
Assignment/transfer of control, each subsequent call sign, fee capped at 10 total call signs per application.	$35.
Rule waivers associated with applications for assignment/transfer of control, per transaction, assessed on the lead application.	$380.
Rule waiver not associated with an application for assignment/transfer of control	$380.
Renewal	$35.
Spectrum leasing	$35.
Maritime, Aviation, Microwave, Land Mobile, and Rural Radio	Please refer to the Wireless Telecommunications Bureau Fee Filing Guide for Information on the payment of an associated regulatory fee.

(c) Personal licenses authorize shared use of certain spectrum bands or provide a required permit for operation of certain radio equipment. In either case,

personal licenses focus only on eligibility and do not require technical review. Examples of these licenses include, but are not limited to, Amateur Radio Service licenses (used for recreational, noncommercial radio services), Ship licenses (used to operate all manner of ships), Aircraft licenses (used to operate all manner of aircraft), Commercial Radio Operator licenses (permits for ship and aircraft station operators, where required), General Mobile Radio Service (GMRS) licenses (used for short-distance, two-way voice communications using handheld radios, as well as for short data messaging applications), Vanity, and Restricted Operator licenses.

TABLE 2 TO PARAGRAPH (c)

Personal license application	New fee
New license, modification	$35.
Special temporary authority	$35.
Rule waiver	$35.
Renewal	$35.
Vanity Call Sign (Amateur Radio Service)	$35.
Marine (Ship), Aviation (Aircraft), and GMRS	Please refer to the Wireless Telecommunications Bureau Fee Filing Guide for Information on the payment of an associated regulatory fee.

(d) Geographic-based licenses authorize an applicant to construct anywhere within a particular geographic area's boundary (subject to certain technical requirements, including interference protection) and generally do not require applicants to submit additional applications for prior Commission approval of specific transmitter locations. Examples of these licenses include, but are not limited to, the 220–222 MHz Service licenses, Upper Microwave Flexible Use Service licenses, 600 MHz Band Service licenses, and 700 MHz Lower Band Service licenses.

TABLE 3 TO PARAGRAPH (d)

Geographic-based license applications	New fee
New License (other than Auctioned Licenses), Major Modification	$305.
New License (Auctioned Licenses, Post-Auction Consolidated Long-Form and Short-Form Fee) (per application; NOT per call sign).	$3,175.
Renewal	$50.
Minor Modification	$200.
Construction Notification/Extensions	$290.
Special Temporary Authority	$335.
Assignment/Transfer of Control, initial call sign	$195.
Assignment/Transfer of Control, subsequent call sign	$35.
Spectrum Leasing	$165.
Rule waivers associated with applications for assignment/transfer of control, per transaction, assessed on the lead application.	$380.
Rule waiver not associated with an application for assignment/transfer of control	$380.
Designated Entity Licensee Reportable Eligibility Event	$50.
Maritime, Microwave, Land Mobile, 218–219 MHz	Please refer to the Wireless Telecommunications Bureau Fee Filing Guide for information on the payment of an associated regulatory fee.

[86 FR 15062, Mar. 19, 2021]

§ 1.1103 Schedule of charges for experimental radio services.

Remit payment for these services electronically using the Commission's electronic payment system in accordance with the procedures set forth on the Commission's website, *www.fcc.gov/licensing-databases/fees*.

TABLE 1 TO § 1.1103

	New fee
Experimental License Application, per Call Sign:	
New Station Authorization	$125
Modification of Authorization	125
Renewal of Station Authorization	125
Assignment of License or Transfer of Control	125
Special Temporary Authority	125
Confidentiality Request	50
Equipment Approval Applications:	
Assignment of Grantee Code	35

[83 FR 38046, Aug. 3, 2018, as amended at 84 FR 66079, Dec. 3, 2019; 86 FR 15063, Mar. 19, 2021]

§ 1.1104 Schedule of charges for applications and other filings for media services.

Remit payment for these services electronically using the Commission's electronic payment system in accordance with the procedures set forth on the Commission's website, *www.fcc.gov/licensing-databases/fees*. The asterisk (*) indicates that multiple stations and multiple fee submissions are acceptable within the same payment.

TABLE 1 TO § 1.1104

	New fee
Application for Full Power and Class A TV:	
Full Power TV, Class A TV, new and major change construction permit	$4,260 (if no auction). $4,835 (if auction—includes Post-Auction Consolidated Long Form and Short Form Fee).
Full Power TV, minor modification construction permit	$1,335.
Full Power TV, Class A TV, new license	$380.
Full Power TV, Class A TV, license renewal	$330.
Full Power TV, Class A TV, license assignment, long form	$1,245.
Full Power TV, Class A TV, license assignment, short form	$405.
Full Power TV, Class A TV, transfer of control, long form	$1,245.
Full Power TV, Class A TV, transfer of control, short form	$405.
Full Power TV, Class A TV, call sign	$170.
Full Power TV, Class A TV, STA	$270.
Full Power TV, petition for rulemaking	$3,395.
Full Power TV, ownership report	$85.
Application for TV translator and LPTV:	
TV translator and LPTV, new or major change construction permit	$775 (if no auction). $1,350 (if auction—includes Consolidated Long Form and Short Form Fee).
TV translator and LPTV, new license	$215.
TV translator and LPTV, license renewal	$145.
TV translator and LPTV, STA	$270.
TV translator and LPTV, license assignment	$335.
TV translator and LPTV, transfer of control	$335.
TV translator and LPTV, call sign	$170.
Application for Cable Television and CARS License:	
Cable television, CARS license	$450.
Cable television, CARS license modification, major	$345.
Cable television, CARS license modification, minor	$50.
Cable television, CARS license renewal	$260.
Cable television, CARS, license assignment	$365.
Cable television, CARS, transfer of control	$465.
Cable television, CARS, STA	$225.
Cable television, special relief petition	$1,615.
Cable television, CARS license, registration statement	$105.
Cable television, multichannel video programming distributor (MVPD) aeronautical frequency usage notification.	$90.
Application for Commercial AM Stations:	
AM radio new or major change construction permit	$3,980 (if no auction). $4,555 (if auction—includes Consolidated Long Form and Short Form Fee).
AM radio, minor modification construction permit	$1,625.
AM radio, new license	$645.

TABLE 1 TO § 1.1104—Continued

	New fee
AM radio, directional antenna	$1,260.
AM radio, license renewal	$325.
AM radio, license assignment, long-form	$1,005.
AM radio, license assignment, short-form	$425.
AM radio, transfer of control, long-form	$1,005.
AM radio, transfer of control, short-form	$425.
AM radio, call sign	$170.
AM radio, STA	$290.
AM radio, ownership report	$85.
Application for Commercial FM Stations:	
FM radio new or major change construction permit	$3,295 (if no auction).
	$3,870 (if auction—includes Consolidated Long Form and Short Form Fee).
FM radio, minor modification construction permit	$1,265.
FM radio, new license	$235.
FM radio, directional antenna	$630.
FM radio, license renewal	$325.
FM radio, license assignment, long-form	$1,005.
FM radio, license assignment, short-form	$425.
FM radio, transfer of control, long-form	$1,005.
FM radio, transfer of control, short-form	$425.
FM radio, call sign	$170.
FM radio, STA	$210.
FM radio, petition for rulemaking	$3,180.
FM radio, ownership report	$85.
Application for FM Translators:	
FM translator new or major change construction permit	$705.
	$1,280 (if auction—includes Consolidated Long Form and Short Form Fee).
FM translator, minor modification construction permit	$210.
FM translator, new license	$180.
FM translator and booster, license renewal	$175.
FM translator and booster, STA	$170.
FM translator, license assignment	$290.
FM translator, transfer of control	$290.
FM booster, new or major change construction permit	$705.
FM booster, new license fee	$180.
FM booster, STA	$170.
Application for Section 310(b)(4) Foreign Ownership Petition:	
Section 310(b)(4) Foreign Ownership Petition (separate and additional to fee required for underlying application, if any)..	$2,485.

[83 FR 38046, Aug. 3, 2018, as amended at 86 FR 11149, Feb. 24, 2021; 86 FR 15063, Mar. 19, 2021]

§ 1.1105 Schedule of charges for applications and other filings for the wireline competition services.

Payments should be made electronically using the Commission's electronic filing and payment system ''Fee Filer'' (*www.fcc.gov/feefiler*). Manual filings and/or payments for these services are no longer accepted.

TABLE 1 TO § 1.1105

Application	New fee
Domestic 214 Applications—Part 63 Transfers of Control	$1,230
Domestic 214 Applications—Special Temporary Authority	675
Domestic 214 Applications—Part 63 Discontinuances (Non-Standard Review) (Technology Transition Filings Subject To Section 63.71(f)(2)(i) or Not Subject To Streamlined Automatic Grant, and Filings From Dominant Carriers Subject To 60-Day Automatic Grant)	1,230
Domestic 214 Applications—Part 63 Discontinuances (Standard Streamlined Review) (All Other Domestic 214 Discontinuance Filings)	335
VoIP Numbering	1,330
Standard Tariff Filing	930
Complex Tariff Filing (annual access charge tariffs, new or restructured rate plans) (Large—all price cap LECs and entities involving more than 100 LECs)	6,540
Complex Tariff Filing (annual access charge tariffs, new or restructured rate plans) (Small—other entities)	3,270
Application for Special Permission for Waiver of Tariff Rules	375
Waiver of Accounting Rules	4,415
Universal Service Fund Auction (combined long-form and short-form fee, paid only by winning bidder)	2,965

[83 FR 38048, Aug. 3, 2018, as amended at 86 FR 15065, Mar. 19, 2021]

§ 1.1106 Schedule of charges for applications and other filings for the enforcement services.

Remit payment for these services electronically using the Commission's electronic payment system in accordance with the procedures set forth on the Commission's website, *www.fcc.gov/licensing-databases/fees*.

TABLE 1 TO § 1.1106

Application	New fee
Formal Complaints and Pole Attachment Complaints	$540
Petitions Regarding Law Enforcement Assistance Capability under CALEA	6,945

[83 FR 38049, Aug. 3, 2018, as amended at 84 FR 8618, Mar. 11, 2019; 86 FR 15065, Mar. 19, 2021]

§ 1.1107 Schedule of charges for applications and other filings for the international services.

Remit payment for these services electronically using the Commission's electronic payment system in accordance with the procedures set forth on the Commission's website, *www.fcc.gov/licensing-databases/fees*.

TABLE 1 TO § 1.1107

	New fee
Cable landing license, per application:	
New License	$3,835.
Assignment/Transfer of Control	$1,230.
Pro Forma Assignment/Transfer of Control	$400.
Foreign Carrier Affiliation Notification	$495.
Modification	$1,230.
Renewal	$2,440.
Special Temporary Authority	$675.
Waiver	$335.
International Section 214 Authorization, per Application:	
New Authorization	$785.
Assignment/transfer of control	$1,230.
Pro forma Assignment/transfer of control	$400.
Foreign Carrier Affiliation Notification	$495.
Modification	$675.
Special Temporary Authority	$675.
Waiver	$335.
Discontinuance of services	$335.
Section 310(b) Foreign Ownership, per Application:	
Petition for Declaratory Ruling	$2,485.
Waiver	$335.
Recognized Operating Agency per Application:	
Application for ROA Status	$1,145.
Waiver	$335.
Data Network Identification Code (DNIC), per Application:	
New DNIC	$785.
Waiver	$335.
International Signaling Point Code (ISPC), per Application:	
New ISPC	$785.
Transfer of Control	$675.
Modification	$675.
Waiver	$335.
Satellite Earth Station Applications:	
Fixed or Temporary Fixed Transmit or Transmit/Receive Earth Stations, per Call Sign:	
Initial application, single site	$360.
Initial application, multiple sites	$6,515.
Receive Only Earth Stations License or Registration, per Call Sign or Registration:	
Initial application or registration, single site	$175.
Initial application or registration, multiple sites, per system	$465.
Initial application for Blanket Earth Stations, per Call Sign	$360.
Mobile Earth Stations Applications, per Call Sign:	
Initial Application for Blanket Authorization, per system, per Call Sign	$815.
Amendments to Earth Station Applications or Registrations per Call Sign:	

TABLE 1 TO § 1.1107—Continued

	New fee
Single Site	$430.
Multiple Sites	$630.
Earth Stations, Other Applications:	
Applications for Modification of Earth Station Licenses or Registrations, per Call Sign.	$545.
Assignment or Transfer of Control of Earth Station Licenses or Registrations, per Call Sign.	$745 (first call sign). $400 (for each additional call sign).
Pro Forma Assignment or Transfer of Control of Earth Station Licenses or Registrations, per Application.	$400.
Earth Station Special Temporary Authority, per call sign	$195.
Earth Station Renewals of Licenses, per Call Sign:	
Single Site	$115.
Multiple Sites	$145.
Earth Station Requests for U.S. Market Access for Non-U.S. Licensed Space Stations.	See Space Stations.
Satellite Space Station Applications:	
Space Stations, Geostationary Orbit:	
Application for Authority to Construct, Deploy, and Operate, per satellite	$3,555.
Application for Authority to Operate, per satellite	$3,555.
Space Stations, Non-Geostationary Orbit:	
Application for Authority to Construct, Deploy, and Operate, per system of technically identical satellites, per Call Sign.	$15,050.
Application for Authority to Operate, per system of technically identical satellites, per Call Sign.	$15,050.
Space Stations, Petition for Declaratory Ruling for Foreign-Licensed Space Station to Access the U.S. Market:	
Geostationary Orbit, per Call Sign	$3,555.
Non-Geostationary Orbit, per Call Sign	$15,050.
Small Satellites, per Call Sign	$2,175.
Space Stations, Small Satellites, or Small Spacecraft:	
Application to Construct, Deploy, and Operate, per Call Sign	$2,175.
Other Applications for Space Stations:	
Space Stations, Amendments, per Call Sign	$1,620.
Space Stations, Modifications, per Call Sign	$2,495.
Space Stations, Assignment or Transfer of Control, per Call Sign	$745 (first call sign). $400 (for each additional call sign).
Space Stations, Pro Forma Assignment or Transfer of Control, per Application.	$400.
Space Stations, Special Temporary Authority, per Call Sign	$1,435.
Unified Space Station and Earth Station Initial Application, Amendment, and Modification:	
Unified Space Station and Earth Station Initial Application, Amendment, and Modification.	Applicable Space Station Fee + Applicable Earth Station Fee.
International Broadcast Stations (IBS) Applications:	
New Construction Permit	$4,010.
Construction Permit Modification	$4,010.
New License	$905.
License Renewal	$230.
Frequency Assignment	$80.
Transfer of Control	$595.
Special Temporary Authority	$395.
Permit to Deliver Programs to Foreign Broadcast Stations under Section 325(c) Applications:	
New License	$360.
License Modification	$185.
License Renewal	$155.
Special Temporary Authority	$155.
Transfer of Control	$260.

[83 FR 38049, Aug. 3, 2018, as amended at 85 FR 17284, Mar. 27, 2020; 85 FR 43733, July 20, 2020; 86 FR 15065, Mar. 19, 2021; 87 FR 34210, June 6, 2022]

§ 1.1108 [Reserved]

§ 1.1109 Schedule of charges for applications and other filings for the Homeland services.

Payments should be made electronically using the Commission's electronic filing and payment system ''Fee Filer'' (*www.fcc.gov/feefiler*). Manual filings and/or payments for these services are no longer accepted.

Service	FCC Form No.	Fee amount	Payment type code
1. Communication Assistance for Law Enforcement (CALEA) Petitions.	Corres & 159	$6,945.00	CLEA

[83 FR 38051, Aug. 3, 2018]

§ 1.1110 Attachment of charges.

The charges required to accompany a request for the Commission's regulatory services listed in §§ 1.1102 through 1.1109 of this subpart will not be refundable to the applicant irrespective of the Commission's disposition of that request. Return or refund of charges will be made only in certain limited instances as set out at § 1.1115 of this subpart.

[74 FR 3445, Jan. 21, 2009]

§ 1.1111 Payment of charges.

(a) The schedule of fees for applications and other filings (Bureau/Office Fee Filing Guides) lists those applications and other filings that must be accompanied by an FCC Form 159, Remittance Advice' or the electronic version of the form, FCC Form 159–E, one of the forms that is automatically generated when an applicant accesses the Commission's on-line filing and payment process.

(b) Applicants may access the Commission's on-line filing (*http://www.fcc.gov/e-file.html*) and fee payment program by accessing (*http://www.fcc.gov/feefiler.html*). Applicants who use the on-line process will be directed to the appropriate electronic application and payment forms for completion and submission of the required application(s) and payment information.

(c) Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

NOTE TO PARAGRAPH (c): This requirement for the simultaneous submission of fee forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. *See* § 1.1121 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted electronically or directly to the Bureau/Office requesting the additional information, as requested. The original fee will be forfeited if the additional information or corrections are not resubmitted by the prescribed deadline. A forfeited application fee will not be refunded. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee. Applicants should attach a copy of the Commission's request for additional or corrected information to their resubmission.

(e) Should the staff change the status of an application, resulting in an increase in the fee due, the applicant will be billed for the remainder under the conditions established by § 1.1118(b) of the rules.

NOTE TO PARAGRAPH (e): Due to the statutory requirements applicable to tariff filings, the procedures for handling tariff filings may vary from the procedures set out in the rules.

[74 FR 3445, Jan. 21, 2009, as amended at 83 FR 2556, Jan. 18, 2018]

§ 1.1112 Form of payment.

(a) Annual and multiple year regulatory fees must be paid electronically as described in paragraph (e) of this section. Fee payments, other than annual and multiple year regulatory fee payments, should be in the form of a check, cashier's check, or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa, MasterCard, American Express, or Discover credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (*i.e.*, checks with a third party as maker or endorser) will not be accepted.

(1) Although payments (other than annual and multiple year regulatory fee payments) may be submitted in the form of a check, cashier's check, or money order, payors of these fees are encouraged to submit these payments electronically under the procedures described in paragraph (e) of this section.

(2) Specific procedures for electronic payments are announced in Bureau/Office fee filing guides.

(3) It is the responsibility of the payer to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing.

(4) To insure proper credit, applicants making wire transfer payments must follow the instructions set out in the appropriate Bureau Office fee filing guide.

(b) Applicants are required to submit one payment instrument (check, cashier's check, or money order) and FCC Form 159 with each application or filing; multiple payment instruments for a single application or filing are not permitted. A separate Fee Form (FCC Form 159) will not be required once the information requirements of that form (the Fee Code, fee amount, and total fee remitted) are incorporated into the underlying application form.

(c) The Commission may accept multiple money orders in payment of a fee for a single application where the fee exceeds the maximum amount for a money order established by the issuing agency and the use of multiple money orders is the only practical method available for fee payment.

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below in paragraphs (d) (1) and (2) of this section.

(1) Payment by cashier's check may be required when a person or organization has made payment, on one or more occasions with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error.

(2) The Commission will notify the party in writing that future payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by cashier's check, the party's payment will not be accepted and its application or other filing will be returned.

(e) Annual and multiple year regulatory fee payments shall be submitted by online ACH payment, online Visa, MasterCard, American Express, or Discover credit card payment, or wire transfer payment denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission. No other credit card is acceptable. Any other form of payment for regulatory fees (e.g., paper checks) will be rejected and sent back to the payor.

(f) All fees collected will be paid into the general fund of the United States Treasury in accordance with Pub. L. 99–272.

(g) The Commission will furnish a stamped receipt of an application filed by mail or in person only upon request that complies with the following instructions. In order to obtain a stamped receipt for an application (or

other filing), the application package must include a copy of the first page of the application, clearly marked ''copy'', submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. If hand delivered, the copy will be date-stamped immediately and provided to the bearer of the submission. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished. Stamped receipts of electronically-filed applications will not be provided.

[52 FR 5289, Feb. 20, 1987; 52 FR 38232, Oct. 15, 1987, as amended at 53 FR 40888, Oct. 19, 1988; 55 FR 19171, May 8, 1990. Redesignated at 59 FR 30998, June 16, 1994, as amended at 59 FR 30999, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 65 FR 49762, Aug. 15, 2000; 67 FR 46303, July 12, 2002; 67 FR 67337, Nov. 5, 2002. Redesignated and amended at 74 FR 3445, Jan. 21, 2009; 80 FR 66816, Oct. 30, 2015; 83 FR 2556, Jan. 18, 2018]

§ 1.1113 Filing locations.

(a) Except as noted in this section, applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1109.

(1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee in accordance with the procedures established in § 1.1105.

(2) Bills for collection will be paid at the Commission's lockbox bank at the address of the appropriate service as established in §§ 1.1102 through 1.1109, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill sent by the Commission. Payments must be accompanied by the bill to ensure proper credit. Electronic payments must include the reference number contained on the bill sent by the Commission.

(3) Petitions for reconsideration or applications for review of fee decisions pursuant to § 1.1119(b) of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. 158(d)(1) or § 1.1116 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed as set forth in §§ 1.1102 through 1.1109.

(b) Except as provided for in paragraph (c) of this section, all materials must be submitted as one package. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations. Materials submitted at other than the location and address required by § 0.401(b) and paragraph (a) of this section will be returned to the applicant or filer.

(c) Fees for applications and other filings pertaining to the Wireless Radio Services that are submitted electronically via ULS may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the application file number (assigned by the ULS electronic filing system on FCC Form 159) and submit such number with the payment in order for the Commission to verify that the payment was made. Manual payments must be received no later than ten (10) days after receipt of the application on ULS or the application will be dismissed. Payment received more than ten (10) days after electronic filing of an application on a Bureau/Office electronic filing system (e.g., ULS) will be forfeited (*see* §§ 1.934 and 1.1111.)

(d) Fees for applications and other filings pertaining to the Multichannel Video and Cable Television Service (MVCTS) and the Cable Television Relay Service (CARS) that are submitted electronically via the Cable Operations and Licensing System (COALS) may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the FCC Form 159 generated by COALS (prefilled with the transaction confirmation number) and completed with the

necessary additional payment information to allow the Commission to verify that payment was made. Manual payments must be received no later than ten (10) days after receipt of the application or filing in COALS or the application or filing will be dismissed.

[55 FR 19171, May 8, 1990. Redesignated at 59 FR 30998, June 16, 1994, as amended at 59 FR 30999, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 63 FR 68941, Dec. 14, 1998; 65 FR 49762, Aug. 15, 2000; 68 FR 27001, May 19, 2003; 69 FR 41176, July 7, 2004. Redesignated and amended at 74 FR 3445, Jan. 21, 2009; 74 FR 5117, Jan. 29, 2009; 75 FR 36550, June 28, 2010; 83 FR 2556, Jan. 18, 2018]

§ 1.1114 Conditionality of Commission or staff authorizations.

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee or delinquent fees and timely payment of bills issued by the Commission. As applied to checks, bank drafts and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the check, bank draft or money order is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the application or filing will be:

(i) Dismissed and returned to the applicant;

(ii) Shall lose its place in the processing line;

(iii) And will not be accorded *nunc pro tunc* treatment if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization for failure to meet the condition imposed by this subsection; and

(ii) Notify the grantee of this action; and

(iii) Not permit *nunc pro tunc* treatment for the resubmission of the application or filing if the relevant deadline has expired.

(3) Upon receipt of a notification of rescision of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a fee or issued a bill payable at a future date, further processing of the application or filing, or the grant of authority, shall be conditioned upon final payment of the fee, plus other required payments for late payments, by the date prescribed by the deferral decision or bill. Failure to comply with the terms of the deferral decision or bill shall result in the automatic dismissal of the submission or rescision of the Commission authorization for failure to meet the condition imposed by this subpart. The Commission reserves the right to return payments received after the date established on the bill and exercise the conditions attached to the application. The Commission shall:

(1) Notify the grantee that the authorization has been rescinded;

(i) Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization.

(ii) [Reserved]

(2) Not permit *nunc pro tunc* treatment to applicants who attempt to refile after the original deadline for the underlying submission.

(c) (1) Where an applicant is found to be delinquent in the payment of application fees, the Commission will make a written request for the delinquent fee, together with any penalties that may be due under this subpart. Such request shall inform the applicant/filer that failure to pay or make satisfactory payment arrangements will result in the Commission's withholding action on, and/or as appropriate, dismissal of, any applications or requests filed by the applicant. The staff shall also inform the applicant of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees, and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is

made. If payment or satisfactory arrangement is not made within 30 days of the date of the original notification, the application will be dismissed.

[52 FR 5289, Feb. 20, 1987, as amended at 55 FR 19171, May 8, 1990. Redesignated at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 69 FR 27847, May 17, 2004. Redesignated and amended at 74 FR 3445, Jan. 21, 2009]

§ 1.1115 Return or refund of charges.

(a) All refunds will be issued to the payer named in the appropriate block of the FCC Form 159. The full amount of any fee submitted will be returned or refunded, as appropriate, under the authority granted at § 0.231.

(1) When no fee is required for the application or other filing. (*see* § 1.1111).

(2) When the fee processing staff or bureau/office determines that an insufficient fee has been submitted within 30 calendar days of receipt of the application or filing and the application or filing is dismissed.

(3) When the application is filed by an applicant who cannot fulfill a prescribed age requirement.

(4) When the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application.

(5) When a waiver is granted in accordance with this subpart.

NOTE: Payments in excess of an application fee will be refunded only if the overpayment is $10 or more.

(6) When an application for new or modified facilities is not timely filed in accordance with the filing window as established by the Commission in a public notice specifying the earliest and latest dates for filing such applications.

(b) Comparative hearings are no longer required.

(c) Applicants in the Media Services for first-come, first-served construction permits will be entitled to a refund of the fee, if, within fifteen days of the issuance of a Public Notice, applicant indicates that there is a previously filed pending application for the same vacant channel, such applicant notifies the Commission that they no longer wish their application to remain on file behind the first applicant and any other applicants filed before his or her application, and the applicant specifically requests a refund of the fee paid and dismissal of his or her application.

(d) Applicants for space station licenses under the first-come, first served procedure set forth in part 25 of this title will be entitled to a refund of the fee if, before the Commission has placed the application on public notice, the applicant notifies the Commission that it no longer wishes to keep its application on file behind the licensee and any other applicants who filed their applications before its application, and specifically requests a refund of the fee and dismissal of its application.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 56 FR 795, Jan. 9, 1991; 56 FR 56602, Nov. 6, 1991. Redesignated at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 65 FR 49762, Aug. 15, 2000; 67 FR 46303, July 12, 2002; 67 FR 67337, Nov. 5, 2002; 68 FR 51502, Aug. 27, 2003; 69 FR 41177, July 7, 2004; 71 54234, Sept. 14, 2006. Redesignated and amended at 74 FR 3445, Jan. 21, 2009]

§ 1.1116 General exemptions to charges.

No fee established in §§ 1.1102 through 1.1109 of this subpart, unless otherwise qualified herein, shall be required for:

(a) Applications filed for the sole purpose of modifying an existing authorization (or a pending application for authorization) in order to comply with new or additional requirements of the Commission's rules or the rules of another Federal agency. However, if the applicant also requests an additional modification, renewal, or other action, the appropriate fee for such additional request must accompany the application. Cases in which a fee will be paid include applications by FM and TV licensees or permittees seeking to upgrade channel after a rulemaking.

(b) Applicants in the Special Emergency Radio and Public Safety Radio Services that are government entities or nonprofit entities. Applicants claiming nonprofit status must include a current Internal Revenue Service Determination Letter documenting this nonprofit status.

(c) Applicants, permittees or licensees of noncommercial educational (NCE) broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

(d) Applicants, permittees, or licensees qualifying under paragraph (c) of this section requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service) private radio service, or common carrier radio communications service otherwise requiring a fee, if the radio service is used in conjunction with the NCE broadcast station on an NCE basis.

(e) Other applicants, permittees, or licensees providing, or proposing to provide, an NCE or instructional service, but not qualifying under paragraph (c) of this section, may be exempt from filing fees, or be entitled to a refund, in the following circumstances.

(1) An applicant is exempt from filing fees if it is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on an NCE basis;

(2) An applicant for a translator or low power television station that proposes an NCE service will be entitled to a refund of fees paid for the filing of the application when, after grant, it provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission.

(3) An applicant that has qualified for a fee refund under paragraph (e)(2) of this section and continues to operate as an NCE station is exempt from fees for broadcast auxiliary stations (subparts D, E, and F of part 74) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the NCE translator or low power station.

(f) Applicants, permittees or licensees who qualify as governmental entities. For purposes of this exemption a governmental entity is defined as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(g) Applications for Restricted Radiotelephone Operator Permits where the applicant intends to use the permit solely in conjunction with duties performed at radio facilities qualifying for fee exemption under paragraphs (c), (d), or (e) of this section.

NOTE: Applicants claiming exemptions under the terms of this subpart must certify as to their eligibility for the exemption through a cover letter accompanying the application or filing. This certification is not required if the applicable FCC Form requests the information justifying the exemption.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 55 FR 19172, May 8, 1990; 56 FR 56602, Nov. 6, 1991. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 65 FR 49762, Aug. 15, 2000; 69 FR 41177, July 7, 2004; 71 FR 54234, Sept. 14, 2006. Redesignated and amended at 74 FR 3445, Jan. 21, 2009; 86 FR 15067, Mar. 19, 2021]

§ 1.1117 Adjustments to charges.

(a) The Schedule of Charges established by §§ 1.1102 through 1.1109 of this subpart shall be reviewed by the Commission on October 1, 1999 and every two years thereafter, and adjustments made, if any, will be reflected in the next publication of Schedule of Charges.

(1) The fees will be adjusted by the Commission to reflect the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) from the date of enactment of the authorizing legislation (December 19, 1989) to the date of adjustment, and every two years thereafter, to reflect the percentage change in the CPI-U in the period between the enactment date and the adjustment date.

(2) Adjustments based upon the percentage change in the CPI-U will be applied against the base fees as enacted or amended by Congress in the year the fee was enacted or amended.

(b) Increases or decreases in charges will apply to all categories of fees covered by this subpart. Individual fees will not be adjusted until the increase or decrease, as determined by the net change in the CPI-U since the date of enactment of the authorizing legislation, amounts to at least $5 in the case of fees under $100, or 5% or more in the case of fees of $100 or greater. All fees will be adjusted upward to the next $5 increment.

(c) Adjustments to fees made pursuant to these procedures will not be subject to notice and comment rulemakings, nor will these decisions be subject to petitions for reconsideration under §1.429 of the rules. Requests for modifications will be limited to correction of arithmetical errors made during an adjustment cycle.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 55 FR 19172, May 8, 1990. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 65 FR 49762, Aug. 15, 2000; 69 FR 41177, July 7, 2004. Redesignated and amended at 74 FR 3445, Jan. 21, 2009]

§ 1.1118 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under §1.1111 (d) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

(1) A defective fee may be corrected by resubmitting the application or other filing, together with the entire correct fee.

(2) For purposes of determining whether the filing is timely, the date of resubmission with the correct fee will be considered the date of filing. However, in cases where the fee payment fails due to error of the applicant's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(b) Applications or filings accompanied by insufficient fees or no fees, or where such applications or filings are made by persons or organizations that are delinquent in fees owed to the Commission, that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill. Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.

(c) Applicants to whom a deferral of payment is granted under the terms of this subsection will be billed for the amount due plus a charge equalling 25 percent of the amount due. Any Commission actions taken prior to timely payment of these charges are contingent and subject to rescission.

(d) Failure to submit fees, following notice to the applicant of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (Apr. 26, 1996), codified at 31 U.S.C. 3711 *et seq.* *See* 47 CFR 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988; 55 FR 19172, May 8, 1990. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 67 FR 67337, Nov. 5, 2002; 69 FR 41177, July 7, 2004; 69 FR 27847, May 17, 2004; 69 FR 41177, July 7, 2004. Redesignated and amended at 74 FR 3445, Jan. 21, 2009]

EDITORIAL NOTE: At 69 FR 57230, Sept. 24, 2004, §1.1116(a) introductory text was corrected by changing the reference to ''§1.1109(b)'' to read ''§1.1109(d)''; however, the amendment could not be incorporated because that reference does not exist in the paragraph.

§ 1.1119 Petitions and applications for review.

(a) The fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of

the fee would promote the public interest.

(b) Requests for waivers or deferrals will only be considered when received from applicants acting in respect to their own applications. Requests for waivers or deferrals of entire classes of services will not be considered.

(c) Petitions for waivers, deferrals, fee determinations, reconsiderations and applications for review will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

(1) Petitions and applications for review submitted with a fee must be submitted electronically or to the Commission's lock box bank at the address for the appropriate service as set forth in §§ 1.1102 through 1.1107.

(2) If no fee payment is submitted, the request should be filed electronically through the Commission's Electronic Comment Filing System or with the Commission's Secretary.

(d) Deferrals of fees will be granted for an established period of time not to exceed six months.

(e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159, or a request for deferral. A petition for waiver and/or deferral of payment must be submitted to the Office of the Managing Director as specified in paragraph (c) of this section. Waiver requests that do not include these materials will be dismissed in accordance with § 1.1111 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.

(f) Petitions for waiver of a fee based on financial hardship will be subject to the provisions of paragraph 1.1166(e).

[52 FR 5289, Feb. 20, 1987, as amended at 55 FR 19172, May 8, 1990; 55 FR 38065, Sept. 17, 1990. Redesignated and amended at 59 FR 30998, June 16, 1994, as further amended at 59 FR 30999, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 65 FR 49762, Aug. 15, 2000; 66 FR 36202, July 11, 2001; 67 FR 67337, Nov. 5, 2002; 68 FR 48467, Aug. 13, 2003. Redesignated and amended at 74 FR 3445, Jan. 21, 2009; 83 FR 2556, Jan. 18, 2018]

§ 1.1120 Error claims.

(a) Applicants who wish to challenge a staff determination of an insufficient fee or delinquent debt may do so in writing. A challenge to a determination that a party is delinquent in paying the full application fee must be accompanied by suitable proof that the fee had been paid or waived (or deferred from payment during the period in question), or by the required application payment and any assessment penalty payment (*see* § 1.1118). Failure to comply with these procedures will result in dismissal of the challenge. These claims should be addressed to the Federal Communications Commission at the address indicated in 47 CFR 0.401(a), Attention: Financial Operations, or emailed to *ARINQUIRIES@fcc.gov*.

(b) Actions taken by Financial Operations staff are subject to the reconsideration and review provisions of §§ 1.106 and 1.115 of this part, EXCEPT THAT reconsideration and/or review will only be available where the applicant has made the full and proper payment of the underlying fee as required by this subpart.

(1) Petitions for reconsideration and/or applications for review submitted by applicants that have not made the full and proper fee payment will be dismissed; and

(2) If the fee payment should fail while the Commission is considering

the matter, the petition for reconsideration or application for review will be dismissed.

[52 FR 5289, Feb. 20, 1987, as amended at 53 FR 40889, Oct. 19, 1988. Redesignated at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 65 FR 49763, Aug. 15, 2000; 69 FR 27848, May 17, 2004. Redesignated and amended at 74 FR 3445, Jan. 21, 2009; 85 FR 64405, Oct. 13, 2020]

§ 1.1121 Billing procedures.

(a) The fees required for the International Telecommunications Settlements (§ 1.1103 of this subpart), Accounting and Audits Field Audits and Review of Arrest Audits (§ 1.1106 of this subpart) should not be paid with the filing or submission of the request. The fees required for requests for Special Temporary Authority (*see* generally §§ 1.1102, 1.1104, 1.1106 & 1.1107 of this subpart) that the applicant believes is of an urgent or emergency nature and are filed directly with the appropriate Bureau or Office should not be paid with the filing of the request with that Bureau or Office.

(b) In these cases, the appropriate fee will be determined by the Commission and the filer will be billed for that fee. The bill will set forth the amount to be paid, the date on which payment is due, and the address to which the payment should be submitted. *See also* § 1.1113 of this subpart.

[55 FR 19172, May 8, 1990, as amended at 58 FR 68541, Dec. 28, 1993. Redesignated and amended at 59 FR 30998, June 16, 1994. Redesignated at 60 FR 5326, Jan. 27, 1995, as amended at 65 FR 49763, Aug. 15, 2000; 67 FR 67337, Nov. 5, 2002; 69 FR 41177, July 7, 2004. Redesignated and amended at 74 FR 3445, Jan. 21, 2009]

§ 1.1151 Authority to prescribe and collect regulatory fees.

Authority to impose and collect regulatory fees is contained in section 9 of the Communications Act, as amended by sections 101–103 of title I of the Consolidated Appropriations Act of 2018 (Pub. L. 115–141, 132 Stat. 1084), 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees to recover the cost of carrying out the functions of the Commission.

[87 FR 56554, Sept. 14, 2022]

§ 1.1152 Schedule of annual regulatory fees for wireless radio services.

TABLE 1 TO § 1.1152

Exclusive use services (per license)	Fee amount
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90):	
(a) New, Renew/Mod (FCC 601 & 159)	$25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
220 MHz Nationwide:	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
2. Microwave (47 CFR part 101) (Private):	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
3. Shared Use Services	
Land Mobile (Frequencies Below 470 MHz—except 220 MHz):	
(a) New, Renew/Mod (FCC 601 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(c) Renewal Only (FCC 601 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00
Rural Radio (47 CFR part 22):	
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(b) Renewal, Minor Renew/Mod (Electronic Filing)	10.00
4. Marine Coast:	
(a) New Renewal/Mod (FCC 601 & 159)	40.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	40.00
(c) Renewal Only (FCC 601 & 159)	40.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	40.00

TABLE 1 TO § 1.1152—Continued

Exclusive use services (per license)	Fee amount
5. Aviation Ground:	
(a) New, Renewal/Mod (FCC 601 & 159)	20.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	20.00
(c) Renewal Only (FCC 601 & 159)	20.00
(d) Renewal Only (Electronic Only) (FCC 601 & 159)	20.00
6. Marine Ship:	
(a) New, Renewal/Mod (FCC 605 & 159)	15.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	15.00
(c) Renewal Only (FCC 605 & 159)	15.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	15.00
7. Aviation Aircraft:	
(a) New, Renew/Mod (FCC 605 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	10.00
(c) Renewal Only (FCC 605 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00
8. CMRS Cellular/Mobile Services (per unit) (FCC 159)	[1].14
9. CMRS Messaging Services (per unit) (FCC 159)	[2].08
10. Broadband Radio Service (formerly MMDS and MDS)	590
11. Local Multipoint Distribution Service	590

[1] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.
[2] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

[87 FR 56554, Sept. 14, 2022]

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

TABLE 1 TO § 1.1153

Radio [AM and FM] (47 CFR part 73)	Fee amount
1. AM Class A:	
<=25,000 population	$1,050.
25,001–75,000 population	1,575.
75,001–150,000 population	2,365.
150,001–500,000 population	3,550.
500,001–1,200,000 population	5,315.
1,200,001–3,000,000 population	7,980.
3,000,001–6,000,000 population	11,960.
>6,000,000 population	17,945.
2. AM Class B:	
≤25,000 population	755.
25,001–75,000 population	1,135.
75,001–150,000 population	1,700.
150,001–500,000 population	2,550.
500,001–1,200,000 population	3,820.
1,200,001–3,000,000 population	5,740.
3,000,001–6,000,000 population	8,600.
>6,000,000 population	12,905.
3. AM Class C:	
≤25,000 population	655.
25,001–75,000 population	985.
75,001–150,000 population	1,475.
150,001–500,000 population	2,215.
500,001–1,200,000 population	3,315.
1,200,001–3,000,000 population	4,980.
3,000,001–6,000,000 population	7,460.
>6,000,000 population	11,195.
4. AM Class D:	
≤25,000 population	720.
25,001–75,000 population	1,080.
75,001–150,000 population	1,620.
150,001–500,000 population	2,435.
500,001–1,200,000 population	3,645.
1,200,001–3,000,000 population	5,470.
3,000,001–6,000,000 population	8,200.
>6,000,000 population	12,305.
5. AM Construction Permit	655.
6. FM Classes A, B1 and C3:	
≤25,000 population	1,145.
25,001–75,000 population	1,720.

TABLE 1 TO § 1.1153—Continued

Radio [AM and FM] (47 CFR part 73)	Fee amount
75,001–150,000 population	2,575.
150,001–500,000 population	3,870.
500,001–1,200,000 population	5,795.
1,200,001–3,000,000 population	8,700.
3,000,001–6,000,000 population	13,040.
>6,000,000 population	19,570.
7. FM Classes B, C, C0, C1 and C2:	
≤25,000 population	1,310.
25,001–75,000 population	1,965.
75,001–150,000 population	2,950.
150,001–500,000 population	4,430.
500,001–1,200,000 population	6,630.
1,200,001–3,000,000 population	9,955.
3,000,001–6,000,000 population	14,920.
>6,000,000 population	22,390.
8. FM Construction Permits	1,145.
TV (47 CFR part 73)	
9. Digital TV (UHF and VHF Commercial Stations):	
1. Digital TV Construction Permits	5,200.
2. Television Fee Factor	.008430 per population count.
10. Low Power TV, Class A TV, FM Translator, & TV/FM Booster (47 CFR part 74)	330.

[87 FR 56555, Sept. 14, 2022]

§ 1.1154 Schedule of annual regulatory charges for common carrier services.

TABLE 1 TO § 1.1154

Radio facilities	Fee amount
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	$25.00.
Carriers	
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A)	.00452.
2. Toll Free Number Fee	.12 per Toll Free Number.

[87 FR 56556, Sept. 14, 2022]

§ 1.1155 Schedule of regulatory fees for cable television services.

TABLE 1 TO § 1.1155

	Fee amount
1. Cable Television Relay Service	$1,715
2. Cable TV System, Including IPTV (per subscriber), and DBS (per subscriber)	1.16

[87 FR 56556, Sept. 14, 2022]

§ 1.1156 Schedule of regulatory fees for international services.

(a) *Geostationary orbit (GSO) and non-geostationary orbit (NGSO) space stations.* The following schedule applies for the listed services:

TABLE 1 TO PARAGRAPH (a)

Fee category	Fee amount
Space Stations (Geostationary Orbit)	$124,060
Space Stations (Non-Geostationary Orbit)—Other	340,005
Space Stations (Non-Geostationary Orbit)—Less Complex	141,670
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215

TABLE 1 TO PARAGRAPH (a)—Continued

Fee category	Fee amount
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	620

(b) *International terrestrial and satellite Bearer Circuits.* (1) Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier terrestrial and satellite operators must pay a fee for each active circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for purposes of this paragraph (b) include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

(2) The fee amount, per active Gbps circuit will be determined for each fiscal year.

TABLE 2 TO PARAGRAPH (b)(2)

International terrestrial and satellite (capacity as of December 31, 2021)	Fee amount
Terrestrial Common Carrier and Non-Common Carrier; Satellite Common Carrier and Non-Common Carrier	$39 *

* Per Gbps circuit.

(c) *Submarine cable.* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating based on their lit capacity as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year.

TABLE 3 TO PARAGRAPH (c)—FY 2021 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (lit capacity as of December 31, 2021)	Fee ratio (units)	FY 2022 regulatory fees
Less than 50 Gbps	.0625	$8,610
50 Gbps or greater, but less than 250 Gbps	.125	17,215
250 Gbps or greater, but less than 1,500 Gbps	.25	34,430
1,500 Gbps or greater, but less than 3,500 Gbps	.5	68,860
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	137,715
6,500 Gbps or greater	2.0	275,430

[87 FR 56556, Sept. 14, 2022]

§ 1.1157 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under §§ 1.1152 through 1.1156, shall be filed in the following manner:

(a)(1) The amount of the regulatory fee payment that is due with any application for authorization shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in § 1.1160, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee due with an application for authorization will result in the return of the accompanying application, including an application for which the Commission has assigned a specific filing deadline.

(b)(1) Payments of standard regulatory fees applicable to certain wireless radio, mass media, common carrier, cable and international services shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the FEDERAL REGISTER.

(2) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments or in a single payment on a date certain as announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the FEDERAL REGISTER.

(c) Standard regulatory fee payments, as well as any installment payment, must be filed with a FCC Form 159, FCC Remittance Advice, and a FCC Form 159C, Remittance Advice Continuation Sheet, if additional space is needed. Failure to submit a copy of FCC Form 159 with a standard regulatory fee payment, or an installment payment, will result in the return of the submission and a 25 percent penalty if the payment is resubmitted after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.

(1) Any late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164.

(2) If one or more installment payments are untimely submitted or not submitted at all, the eligibility of the subject regulatee to submit installment payments may be cancelled.

(d) Any Commercial Mobile Radio Service (CMRS) licensee subject to payment of an annual regulatory fee shall retain for a period of two (2) years from the date on which the regulatory fee is paid, those business records which were used to calculate the amount of the regulatory fee.

[60 FR 34031, June 29, 1995, as amended at 62 FR 59825, Nov. 5, 1997; 67 FR 46306, July 12, 2002]

§ 1.1158 Form of payment for regulatory fees.

Any annual and multiple year regulatory fee payment must be submitted by online Automatic Clearing House (ACH) payment, online Visa, MasterCard, American Express, or Discover credit card payment, or wire transfer payment denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission. No other credit card is acceptable. Any other form of payment for annual and multiple year regulatory fees (e.g., paper checks, cash) will be rejected and sent back to the payor. The Commission will not be responsible for cash, under any circumstances, sent through the mail.

(a) Payors making wire transfer payments must submit an accompanying FCC Form 159–E via facsimile.

(b) Multiple payment instruments for a single regulatory fee are not permitted, except that the Commission will accept multiple money orders in payment of any fee where the fee exceeds the maximum amount for a money order established by the issuing entity and the use of multiple money orders is the only practicable means available for payment.

(c) Payment of multiple standard regulatory fees (including an installment payment) due on the same date, may be made with a single payment instrument and cover mass media, common carrier, international, and cable service fee payments. Each regulatee is solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, access lines, or other relevant units on the accompanying FCC Form 159 and, if needed, FCC Form 159C and for making full payment for every regulatory fee listed on the accompanying form. Any omission or payment deficiency of a regulatory fee will result in a 25 percent penalty of the amount due and unpaid.

(d) Any regulatory fee payment (including a regulatory fee payment submitted with an application in the wireless radio service) made by credit card or money order must be submitted with a completed FCC Form 159. Failure to accurately enter the credit card

number and date of expiration and the payor's signature in the appropriate blocks on FCC Form 159 will result in rejection of the credit card payment.

[60 FR 34031, June 29, 1995, as amended at 67 FR 46306, July 12, 2002; 80 FR 66816, Oct. 30, 2015]

§ 1.1159 Filing locations and receipts for regulatory fees.

(a) Regulatory fee payments must be directed to the location and address set forth in §§ 1.1152 through 1.1156 for the specific category of fee involved. Any regulatory fee required to be submitted with an application must be filed as a part of the application package accompanying the application. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations.

(b) Petitions for reconsideration or applications for review of fee decisions submitted with a standard regulatory fee payment pursuant to §§ 1.1152 through 1.1156 of the rules are to be filed with the Commission's lockbox bank in the manner set forth in §§ 1.1152 through 1.1156 for payment of the fee subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

(c) Any request for exemption from a regulatory fee shall be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554, except that requests for exemption accompanied by a tentative fee payment shall be filed at the lockbox set forth for the appropriate service in §§ 1.1152 through 1.1156.

(d) The Commission will furnish a receipt for a regulatory fee payment only upon request. In order to obtain a receipt for a regulatory fee payment, the package must include an extra copy of the Form FCC 159 or, if a Form 159 is not required with the payment, a copy of the first page of the application or other filing submitted with the regulatory fee payment, submitted expressly for the purpose of serving as a receipt for the regulatory fee payment and application fee payment, if required. The document should be clearly marked ''copy'' and should be the top document in the package. The copy will be date stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the receipt document.

(e) The Managing Director may issue annually, at his discretion, a Public Notice setting forth the names of all commercial regulatees that have paid a regulatory fee and shall publish the Public Notice in the FEDERAL REGISTER.

[60 FR 34032, June 29, 1995, as amended at 62 FR 59825, Nov. 5, 1997]

§ 1.1160 Refunds of regulatory fees.

(a) Regulatory fees will be refunded, upon request, only in the following instances:

(1) When no regulatory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in the appropriate block of the FCC Form 159. Payments in excess of a regulatory fee will be refunded only if the overpayment is $10.00 or more.

(2) In the case of advance payment of regulatory fees, subject to § 1.1152, a refund will be issued based on unexpired full years:

(i) When the Commission adopts new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless;

(ii) When a licensee in the wireless radio service surrenders the license or other authorization subject to a fee payment to the Commission; or

(iii) When the Commission declines to grant an application submitted with a regulatory fee payment.

(3) When a waiver is granted in accordance with § 1.1166.

(b) No pro-rata refund of an annual fee will be issued.

(c) No refunds will be issued based on unexpired partial years.

(d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

[60 FR 34032, June 29, 1995, as amended at 67 FR 46307, July 12, 2002]

§ 1.1161 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing for which an annual or multiple year regulatory fee is required to accompany the application or filing will be conditioned upon final payment of the current or delinquent regulatory fees. Current annual and multiple year regulatory fees must be paid electronically as described in §1.1112(e). For all other fees, (*e.g., application fees, delinquent regulatory fees*) final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, cashier's check, or money order is drawn. Electronic payments are considered timely when a wire transfer was received by the Commission's bank no later than 6:00 p.m. on the due date; confirmation to pay.gov that a credit card payment was successful no later than 11:59 p.m. (EST) on the due date; or confirmation an ACH was credited no later than 11:59 p.m. (EST) on the due date.

(b) In those instances where the Commission has granted a request for deferred payment of a regulatory fee, further processing of the application or filing or the grant of authority shall be conditioned upon final payment of the regulatory fee and any required penalties for late payment prescribed by the deferral decision. Failure to comply with the terms of the deferral decision shall result in the automatic dismissal of the submission or rescission of the Commission authorization. Further, the Commission shall:

(1) Notify the grantee that the authorization has been rescinded. Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization; and

(2) Treat as late filed any application resubmitted after the original deadline for filing the application.

(c)(1) Where an applicant is found to be delinquent in the payment of regulatory fees, the Commission will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's determination.

(2) If, after final determination that the fee is due or that the applicant is delinquent in the payment of fees and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days, the application will be dismissed.

[60 FR 34032, June 29, 1995, as amended at 69 FR 27848, May 17, 2004; 80 FR 66816, Oct. 30, 2015]

§ 1.1162 General exemptions from regulatory fees.

No regulatory fee established in §§1.1152 through 1.1156, unless otherwise qualified herein, shall be required for: (a) Applicants, permittees or licensees in the Amateur Radio Service, *except that* any person requesting a vanity call-sign shall be subject to the payment of a regulatory fee, as prescribed in §1.1152.

(b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(c) Applicants and permittees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as: an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. 501; or an entity with current certification as a nonprofit corporation or other nonprofit

entity by state or other governmental authority.

(1) Any permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee based upon its status as a nonprofit entity, as described above, shall file with the Secretary of the Commission (Attn: Managing Director) written documentation establishing the basis for its exemption within 60 days of its coming under the regulatory jurisdiction of the Commission or at the time its fee payment would otherwise be due, whichever is sooner, or at such other time as required by the Managing Director. Acceptable documentation may include Internal Revenue Service determination letters, state or government certifications or other documentation that non-profit status has been approved by a state or other governmental authority. Applicants, permittees and licensees are required to file documentation of their nonprofit status only once, except upon request of the Managing Director.

(2) Within sixty (60) days of a change in nonprofit status, a licensee or permittee previously claiming a 501(C) exemption is required to file with the Secretary of the Commission (Attn: Managing Director) written notice of such change in its nonprofit status or ownership. Additionally, for-profit purchasers or assignees of a license, station or facility previously licensed or operated by a non-profit entity not subject to regulatory fees must notify the Secretary of the Commission (Attn: Managing Director) of such purchase or reassignment within 60 days of the effective date of the purchase or assignment.

(d) Applicants, permittees or licensees in the Special Emergency Radio and Public Safety Radio services.

(e) Applicants, permittees or licensees of noncommercial educational (NCE) broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

(f) Applicants, permittees, or licensees qualifying under paragraph (e) of this section requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service), wireless radio service, common carrier radio service, or international radio service requiring payment of a regulatory fee, if the service is used in conjunction with their NCE broadcast station on an NCE basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a NCE or instructional service, but not qualifying under paragraph (e) of this section, may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on an NCE basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating or proposing to operate an NCE service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under § 1.1160 and operating as an NCE station, is exempt from fees for broadcast auxiliary stations (subparts D, E, F, and G of part 74 of this chapter) or stations in the wireless radio, common carrier, or international services where such authorization is to be used in conjunction with the NCE translator or low power station.

(h) An applicant, permittee or licensee that is the licensee in the Educational Broadband Service (EBS) (formerly, Instructional Television Fixed Service (ITFS)) (parts 27 and 74, e.g., §§ 27.1200, *et seq.*, and 74.832(b), of this chapter) is exempt from regulatory fees where the authorization requested will be used by the applicant in conjunction with the provision of the EBS.

(i) Applications filed in the wireless radio service for the sole purpose of modifying an existing authorization (or

a pending application for authorization). However, if the applicant also requests a renewal or reinstatement of its license or other authorization for which the submission of a regulatory fee is required, the appropriate regulatory fee for such additional request must accompany the application.

[60 FR 34033, June 29, 1995, as amended at 60 FR 34904, July 5, 1995; 62 FR 59825, Nov. 5, 1997; 71 FR 43872, Aug. 2, 2006]

§ 1.1163 Adjustments to regulatory fees.

(a) For Fiscal Year 2019 and thereafter, the Schedule of Regulatory Fees, contained in §§ 1.1152 through 1.1156, may be adjusted annually by the Commission pursuant to section 9 of the Communications Act. 47 U.S.C. 159, as amended. Adjustments to the fees established for any category of regulatory fee payment shall include projected cost increases or decreases and an estimate of the volume of units upon which the regulatory fee is calculated.

(b) The fees assessed shall:

(1) Be derived by determining the full-time equivalent number of employees, bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities; and

(2) Be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in paragraph (b)(1) of this section.

(c) The Commission shall by rule amend the Schedule of Regulatory Fees by increases or decreases that reflect, in accordance with paragraph (b)(2) of this section, changes in the amount appropriated for the performance of the activities described in paragraph (b)(1) of this section, for such fiscal year. Such increases or decreases shall be adjusted to reflect unexpected increases or decreases in the number of units subject to payment of such fees and result in collection of an aggregate amount of fees that will approximately equal the amount appropriated for the subject regulatory activities.

(d) The Commission shall, by rule, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (b)(1) of this section.

(e) In adjusting regulatory fees, the Commission will round such fees to the nearest $5.00 in the case of fees under $1,000.00, or to the nearest $25.00 in the case of fees of $1,000.00 or more.

[84 FR 51002, Sept. 26, 2019]

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

Electronic payments are considered timely when a wire transfer was received by the Commission's bank no later than 6:00 p.m. on the due date; confirmation to *pay.gov* that a credit card payment was successful no later than 11:59 p.m. (EST) on the due date; or confirmation an ACH was credited no later than 11:59 p.m. (EST) on the due date. In instances where a non-annual regulatory payment (*i.e.*, delinquent payment) is made by check, cashier's check, or money order, a timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or by the Managing Director. Where a non-annual regulatory fee payment is made by check, cashier's check, or money order, a timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or the Managing Director. Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee or installment payment which was not paid in a timely manner.

(a) The Commission may, in its discretion, following one or more late filed installment payments, require a regulatee to pay the entire balance of its regulatory fee by a date certain, in addition to assessing a 25 percent penalty.

(b) In cases where a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to revocation.

(d)(1) Where a regulatee's new, renewal or reinstatement application is required to be filed with a regulatory fee (as is the case with wireless radio services), the application will be dismissed if the regulatory fee is not included with the application package. In the case of a renewal or reinstatement application, the application may not be refiled unless the appropriate regulatory fee plus the 25 percent penalty charge accompanies the refiled application.

(2) If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline, or any other application that must be filed by a date certain, the application will be dismissed if not accompanied by the proper regulatory fee and will be treated as late filed if resubmitted after the original date for filing application.

(e) Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.

(f) In instances where the Commission may revoke an existing instrument of authorization for failure to timely pay a regulatory fee, or any associated interest or penalty, the Commission will provide prior notice of its intent to revoke the licensee's instruments of authorization by registered mail, return receipt requested to the licensee at its last known address. The notice shall provide the licensee no less than 60 days to either pay the fee, penalty and interest in full or show cause why the fee, interest or penalty is inapplicable or should otherwise be waived or deferred.

(1) An adjudicatory hearing will not be designated unless the response by the regulatee to the Order to Show Cause presents a substantial and material question of fact.

(2) Disposition of the proceeding shall be based upon written evidence only and the burden of proceeding with the introduction of the evidence and the burden of proof shall be on the respondent regulatee.

(3) Unless the regulatee substantially prevails in the hearing, the Commission may assess costs for the conduct of the proceeding against the respondent regulatee. *See* 47 U.S.C. 402(b)(5).

(4) Any Commission order adopted under the regulation in paragraph (f) of this section shall determine the amount due, if any, and provide the licensee with at least 60 days to pay that amount or have its authorization revoked.

(5) No order of revocation under this section shall become final until the licensee has exhausted its right to judicial review of such order under 47 U.S.C. 402(b)(5).

(6) Any regulatee failing to submit a regulatory fee, following notice to the regulatee of failure to submit the required fee, is subject to collection of the required fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal Government pursuant to section 3702A of the Internal Revenue Code, 31 U.S.C. 3717, and the provisions of the Debt Collection Improvement Act. *See* §§ 1.1901 through 1.1952. The debt collection processes described in paragraphs (a) through (f)(5) of this section may proceed concurrently with any other sanction in this paragraph (f)(6).

(7) An application or filing by a regulatee that is delinquent in its debt to the Commission is also subject to dismissal under § 1.1910.

[84 FR 51002, Sept. 26, 2019]

§ 1.1165 Payment by cashier's check for regulatory fees.

Payment by cashier's check may be required when a person or organization makes payment, on one or more occasions, with a payment instrument on which the Commission does not receive

final payment and such error is not excused by bank error.

[60 FR 34034, June 29, 1995]

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

The fees established by §§ 1.1152 through 1.1156 and associated interest charges and penalties may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of such fees, interest charges and penalties would promote the public interest. Requests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.

(a) Requests for waivers, reductions or deferrals should be filed with the Commission's Secretary and will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission.

(b) Deferrals of fees, interest, or penalties if granted, will be for a designated period of time not to exceed six months.

(c) Petitions for waiver of a regulatory fee, interest, or penalties must be accompanied by the required fee, interest, or penalties and FCC Form 159. Submitted fees, interest, or penalties will be returned if a waiver is granted. Waiver requests that do not include the required fees, interest, or penalties or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(d) Petitions for reduction of a fee, interest, or penalty must be accompanied by the full fee, interest, or penalty payment and Form 159. Petitions for reduction that do not include the required fees, interest, or penalties or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(e) Petitions for waiver of a fee, interest, or penalty based on financial hardship, including bankruptcy, will not be granted, even if otherwise consistent with Commission policy, to the extent that the total regulatory and application fees, interest, or penalties for which waiver is sought exceeds $500,000 in any fiscal year, including regulatory fees due in any fiscal year, but paid prior to the due date. In computing this amount, the amounts owed by an entity and its subsidiaries and other affiliated entities will be aggregated. In cases where the claim of financial hardship is not based on bankruptcy, waiver, partial waiver, or deferral of fees, interest, or penalties above the $500,000 cap may be considered on a case-by-case basis.

[84 FR 51003, Sept. 26, 2019]

§ 1.1167 Error claims related to regulatory fees.

(a) Challenges to determinations or an insufficient regulatory fee payment or delinquent fees should be made in writing. A challenge to a determination that a party is delinquent in paying a standard regulatory fee must be accompanied by suitable proof that the fee had been paid or waived (deferred from payment during the period in question), or by the required regulatory payment and any assessed penalty payment (see § 1.1164(c) of this subpart). Challenges submitted with a fee payment must be submitted to address stated on the invoice or billing statement. Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director or emailed to *ARINQUIRIES@fcc.gov*.

(b) The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. Petitions for reconsideration and applications for review submitted with a fee payment must be submitted to the same location as the original fee payment.

Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(1) Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty.

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

[60 FR 34035, June 29, 1995, as amended at 69 FR 27848, May 17, 2004]

§ 1.1181 Authority to prescribe and collect fees for competitive bidding-related services and products.

Authority to prescribe, impose, and collect fees for expenses incurred by the government is governed by the Independent Offices Appropriation Act of 1952, as amended, 31 U.S.C. 9701, which authorizes agencies to prescribe regulations that establish charges for the provision of government services and products. Under this authority, the Federal Communications Commission may prescribe and collect fees for competitive bidding-related services and products as specified in § 1.1182.

[60 FR 38280, July 26, 1995]

§ 1.1182 Schedule of fees for products and services provided by the Commission in connection with competitive bidding procedures.

Product or service	Fee amount	Payment procedure
On-line remote access 900 Number Telephone Service).	2.30 per minute	Charges included on customer's long distance telephone bill.
Remote Bidding Software	$175.00 per package	Payment to auction contractor by credit card or check. (Public Notice will specify exact payment procedures.)
Bidder Information Package	First package free; $16.00 per additional package (including postage) to same person or entity.	Payment to auction contractor by credit card or check. (Public Notice will specify exact payment procedures.)

[60 FR 38280, July 26, 1995]

Subpart H—Ex Parte Communications

SOURCE: 52 FR 21052, June 4, 1987, unless otherwise noted.

GENERAL

§ 1.1200 Introduction.

(a) *Purpose*. To ensure the fairness and integrity of its decision-making, the Commission has prescribed rules to regulate *ex parte* presentations in Commission proceedings. These rules specify ''exempt'' proceedings, in which *ex parte* presentations may be made freely (§ 1.1204(b)), ''permit-but-disclose'' proceedings, in which *ex parte* presentations to Commission decision-making personnel are permissible but subject to certain disclosure requirements (§ 1.1206), and ''restricted'' proceedings in which *ex parte* presentations to and from Commission decision-making personnel are generally prohibited (§ 1.1208). In all proceedings, a certain period (''the Sunshine Agenda period'') is designated in which all presentations to Commission decision-making personnel are prohibited (§ 1.1203). The limitations on *ex parte* presentations described in this section are subject to certain general exceptions set forth in § 1.1204(a). Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice. Joint Boards may modify the *ex parte* rules in proceedings before them.

(b) Inquiries concerning the propriety of *ex parte* presentations should be directed to the Office of General Counsel.

[62 FR 15853, Apr. 3, 1997]

§ 1.1202 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Presentation*. A communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this term are communications which are inadvertently or casually made, inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken. However, a status inquiry which states or implies a view as to the merits or outcome of the proceeding or a preference for a particular party, which states why timing is important to a particular party or indicates a view as to the date by which a proceeding should be resolved, or which otherwise is intended to address the merits or outcome or to influence the timing of a proceeding is a presentation.

NOTE TO PARAGRAPH (a): A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, no view is expressed as to the merits or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved. A presentation by a party in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an ex parte basis subject to the provisions of § 1.1204(a)(11).

(b) *Ex parte presentation*. Any presentation which:

(1) If written, is not served on the parties to the proceeding; or

(2) If oral, is made without advance notice to the parties and without opportunity for them to be present.

NOTE TO PARAGRAPH (b): Written communications include electronic submissions transmitted in the form of texts, such as by Internet electronic mail.

(c) *Decision-making personnel*. Any member, officer, or employee of the Commission, or, in the case of a Joint Board, its members or their staffs, who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisional process shall not be treated as a decision-maker with respect to that proceeding. Thus, any person designated as part of a separate trial staff shall not be considered a decision-making person in the designated proceeding. Unseparated Bureau or Office staff shall be considered decision-making personnel with respect to decisions, rules, and orders in which their Bureau or Office participates in enacting, preparing, or reviewing. Commission staff serving as the case manager in a hearing proceeding in which the Commission is the presiding officer shall be considered decision-making personnel with respect to that hearing proceeding.

(d) *Party*. Unless otherwise ordered by the Commission, the following persons are parties:

(1) In a proceeding not designated for hearing, any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application or members of Congress or their staffs or branches of the federal government or their staffs) filing a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application;

NOTE 1 TO PARAGRAPH (d)(1): Persons who file mutually exclusive applications for services that the Commission has announced will be subject to competitive bidding or lotteries shall not be deemed parties with respect to each others' applications merely because their applications are mutually exclusive. Therefore, such applicants may make presentations to the Commission about their own applications provided that no one has

become a party with respect to their application by other means, e.g., by filing a petition or other opposition against the applicant or an associated waiver request, if the petition or opposition has been served on the applicant.

(2) Any person who files a complaint or request to revoke a license or other authorization or for an order to show cause which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721 of this chapter or 47 U.S.C. 255 and either §§ 6.21 or 7.21 of this chapter, and the person who is the subject of such a complaint or request that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721 of this chapter or 47 U.S.C. 255 and either §§ 6.21 or 7.21 of this chapter;

(3) The subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order;

(4) In a proceeding designated for hearing, any person who has been given formal party status; and

(5) In an informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act (other than a proceeding for the allotment of a broadcast channel) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, members of the general public after the issuance of a notice of proposed rulemaking or other order as provided under § 1.1206(a) (1) or (2).

NOTE 2 TO PARAGRAPH (d): To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairman or individual Commissioners will not confer party status.

NOTE 3 TO PARAGRAPH (d): The fact that a person is deemed a party for purposes of this subpart does not constitute a determination that such person has satisfied any other legal or procedural requirements, such as the operative requirements for petitions to deny or requirements as to timeliness. Nor does it constitute a determination that such person has any other procedural rights, such as the right to intervene in hearing proceedings. The Commission or the staff may also determine in particular instances that persons who qualify as ''parties'' under § 1.1202(d) should nevertheless not be deemed parties for purposes of this subpart.

NOTE 4 TO PARAGRAPH (d): Individual listeners or viewers submitting comments regarding a pending broadcast application pursuant to § 1.1204(a)(8) will not become parties simply by service of the comments. The Media Bureau may, in its discretion, make such a commenter a party, if doing so would be conducive to the Commission's consideration of the application or would otherwise be appropriate.

NOTE 5 TO PARAGRAPH (d): A member of Congress or his or her staff, or other agencies or branches of the federal government or their staffs will not become a party by service of a written submission regarding a pending proceeding that has not been designated for hearing unless the submission affirmatively seeks and warrants grant of party status.

(e) *Matter designated for hearing*. Any matter that has been designated for hearing before a presiding officer.

[62 FR 15854, Apr. 3, 1997, as amended at 64 FR 68947, Dec. 9, 1999; 64 FR 72571, Dec. 28, 1999; 65 FR 56261, Sept. 18, 2000; 67 FR 13224, Mar. 21, 2002; 76 FR 24381, May 2, 2011; 85 FR 63183, Oct. 6, 2020]

SUNSHINE PERIOD PROHIBITION

§ 1.1203 Sunshine period prohibition.

(a) With respect to any Commission proceeding, all presentations to decisionmakers concerning matters listed on a Sunshine Agenda, whether ex parte or not, are prohibited during the period prescribed in paragraph (b) of this section unless:

(1) The presentation is exempt under § 1.1204(a);

(2) The presentation relates to settlement negotiations and otherwise complies with any *ex parte* restrictions in this subpart;

(3) The presentation occurs in the course of a widely attended speech or panel discussion and concerns a Commission action in an exempt or a permit-but-disclose proceeding that has been adopted (not including private presentations made on the site of a widely attended speech or panel discussion); or

(4) The presentation is made by a member of Congress or his or her staff, or by other agencies or branches of the Federal government or their staffs in a

proceeding exempt under § 1.1204 or subject to permit-but-disclose requirements under § 1.1206. Except as otherwise provided in § 1.1204(a)(6), if the presentation is of substantial significance and clearly intended to affect the ultimate decision, and is made in a permit-but-disclose proceeding, the presentation (or, if oral, a summary of the presentation) must be placed in the record of the proceeding by Commission staff or by the presenter in accordance with the procedures set forth in § 1.1206(b).

(b) The prohibition set forth in paragraph (a) of this section begins on the day (including business days and holidays) after the release of a public notice that a matter has been placed on the Sunshine Agenda until the Commission:

(1) Releases the text of a decision or order relating to the matter;

(2) Issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or

(3) Issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first.

(c) The prohibition set forth in paragraph (a) of this section shall not apply to the filing of a written *ex parte* presentation or a memorandum summarizing an oral *ex parte* presentation made on the day before the Sunshine period begins, or a permitted reply thereto.

[62 FR 15855, Apr. 3, 1997, as amended at 64 FR 68947, Dec. 9, 1999; 76 FR 24381, May 2, 2011]

GENERAL EXEMPTIONS

§ 1.1204 Exempt ex parte presentations and proceedings.

(a) *Exempt ex parte presentations*. The following types of presentations are exempt from the prohibitions in restricted proceedings (§ 1.1208), the disclosure requirements in permit-but-disclose proceedings (§ 1.1206), and the prohibitions during the Sunshine Agenda period prohibition (§ 1.1203):

(1) The presentation is authorized by statute or by the Commission's rules to be made without service, see, e.g., § 1.333(d), or involves the filing of required forms;

(2) The presentation is made by or to the General Counsel and his or her staff and concerns judicial review of a matter that has been decided by the Commission;

(3) The presentation directly relates to an emergency in which the safety of life is endangered or substantial loss of property is threatened, provided that, if not otherwise submitted for the record, Commission staff promptly places the presentation or a summary of the presentation in the record and discloses it to other parties as appropriate.

(4) The presentation involves a military or foreign affairs function of the United States or classified security information;

(5) The presentation is to or from an agency or branch of the Federal Government or its staff and involves a matter over which that agency or branch and the Commission share jurisdiction provided that, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will, if not otherwise submitted for the record, be disclosed by the Commission no later than at the time of the release of the Commission's decision;

(6) The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a communications matter in a proceeding which has not been designated for hearing and in which the relevant agency is not a party or commenter (in an informal rulemaking or Joint board proceeding) *provided that*, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will be disclosed by the Commission no later than at the time of the release of the Commission's decision;

NOTE 1 TO PARAGRAPH (a): Under paragraphs (a)(5) and (a)(6) of this section, information will be relied on and disclosure will be made only after advance coordination with the agency involved in order to ensure that the agency involved retains control over the timing and extent of any disclosure that may have an impact on that agency's jurisdictional responsibilities. If the agency involved does not wish such information to

be disclosed, the Commission will not disclose it and will disregard it in its decision-making process, unless it fits within another exemption not requiring disclosure (e.g., foreign affairs). The fact that an agency's views are disclosed under paragraphs (a)(5) and (a)(6) does not preclude further discussions pursuant to, and in accordance with, the exemption.

(7) The presentation is between Commission staff and an advisory coordinating committee member with respect to the coordination of frequency assignments to stations in the private land mobile services or fixed services as authorized by 47 U.S.C. 332;

(8) The presentation is a written presentation made by a listener or viewer of a broadcast station who is not a party under §1.1202(d)(1), and the presentation relates to a pending application that has not been designated for hearing for a new or modified broadcast station or license, for renewal of a broadcast station license or for assignment or transfer of control of a broadcast permit or license;

(9) The presentation is made pursuant to an express or implied promise of confidentiality to protect an individual from the possibility of reprisal, or there is a reasonable expectation that disclosure would endanger the life or physical safety of an individual;

(10) The presentation is requested by (or made with the advance approval of) the Commission or staff for the clarification or adduction of evidence, or for resolution of issues, including possible settlement, subject to the following limitations:

(i) This exemption does not apply to restricted proceedings designated for hearing;

(ii) In restricted proceedings not designated for hearing, any new written information elicited from such request or a summary of any new oral information elicited from such request shall promptly be served by the person making the presentation on the other parties to the proceeding. Information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section. The Commission or its staff may waive the service requirement if service would be too burdensome because the parties are numerous or because the materials relating to such presentation are voluminous. If the service requirement is waived, copies of the presentation or summary shall be placed in the record of the proceeding and the Commission or its staff shall issue a public notice which states that copies of the presentation or summary are available for inspection. The Commission or its staff may determine that service or public notice would interfere with the effective conduct of an investigation and dispense with the service and public notice requirements;

(iii) If the presentation is made in a proceeding subject to permit-but-disclose requirements, disclosure of any new written information elicited from such request or a summary of any new oral information elicited from such request must be made in accordance with the requirements of §1.1206(b), provided, however, that the Commission or its staff may determine that disclosure would interfere with the effective conduct of an investigation and dispense with the disclosure requirement. As in paragraph (a)(10)(ii) of this section, information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section;

NOTE 2 TO PARAGRAPH (a): If the Commission or its staff dispenses with the service or notice requirement to avoid interference with an investigation, a determination will be made in the discretion of the Commission or its staff as to when and how disclosure should be made if necessary. *See Amendment of Subpart H, Part I*, 2 FCC Rcd 6053, 6054 ¶¶10–14 (1987).

(iv) If the presentation is made in a proceeding subject to the Sunshine period prohibition, disclosure must be made in accordance with the requirements of §1.1206(b) or by other adequate means of notice that the Commission deems appropriate;

(v) In situations where new information regarding the merits is disclosed during settlement discussions, and the Commission or staff intends that the product of the settlement discussions will be disclosed to the other parties or the public for comment before any action is taken, the Commission or staff

in its discretion may defer disclosure of such new information until comment is sought on the settlement proposal or the settlement discussions are terminated.

(11) The presentation is an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay. A detailed summary of the presentation shall promptly be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement.

(12) The presentation is between Commission staff and:

(i) The administrator of the interstate telecommunications relay services fund relating to administration of the telecommunications relay services fund pursuant to 47 U.S.C. 225;

(ii) The North American Numbering Plan Administrator or the North American Numbering Plan Billing and Collection Agent relating to the administration of the North American Numbering Plan pursuant to 47 U.S.C. 251(e);

(iii) The Universal Service Administrative Company relating to the administration of universal service support mechanisms pursuant to 47 U.S.C. 254; or

(iv) The Number Portability Administrator relating to the administration of local number portability pursuant to 47 U.S.C. 251(b)(2) and (e), provided that the relevant administrator has not filed comments or otherwise participated as a party in the proceeding;

(v) The TRS Numbering Administrator relating to the administration of the TRS numbering directory pursuant to 47 U.S.C. 225 and 47 U.S.C. 251(e); or

(vi) The Pooling Administrator relating to the administration of thousands-block number pooling pursuant to 47 U.S.C. 251(e).

(b) *Exempt proceedings*. Unless otherwise provided by the Commission or the staff pursuant to § 1.1200(a), *ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed with respect to the following proceedings, which are referred to as ''exempt'' proceedings:

(1) A notice of inquiry proceeding;

(2) A petition for rulemaking, except for a petition requesting the allotment of a broadcast channel (see also § 1.1206(a)(1)), or other request that the Commission modify its rules, issue a policy statement or issue an interpretive rule, or establish a Joint Board;

(3) A tariff proceeding (including directly associated waiver requests or requests for special permission) prior to it being set for investigation (see also § 1.1206(a)(4));

(4) A proceeding relating to prescription of common carrier depreciation rates under section 220(b) of the Communications Act prior to release of a public notice of specific proposed depreciation rates (see also § 1.1206(a)(9));

(5) An informal complaint proceeding under 47 U.S.C. 208 and § 1.717 of this chapter or 47 U.S.C. 255 and either §§ 6.17 or 7.17 of this chapter; and

(6) A complaint against a cable operator regarding its rates that is not filed on the standard complaint form required by § 76.951 of this chapter (FCC Form 329).

NOTES 1–3 TO PARAGRAPH (b): [Reserved]

NOTE 4 TO PARAGRAPH (b): In the case of petitions for rulemaking that seek Commission preemption of state or local regulatory authority, the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. Service should be made on those bodies within the state or local governments that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the *ex parte* rules unless the Commission determines that the matter should be entertained by making it part of the record under § 1.1212(d) and the parties are so informed.

[62 FR 15855, Apr. 3, 1997, as amended at 64 FR 63251, Nov. 19, 1999; 64 FR 68948, Dec. 9, 1999; 76 FR 24381, May 2, 2011]

NON-RESTRICTED PROCEEDINGS

§ 1.1206 Permit-but-disclose proceedings.

(a) Unless otherwise provided by the Commission or the staff pursuant to § 1.1200(a), until the proceeding is no longer subject to administrative reconsideration or review or to judicial review, *ex parte* presentations (other than *ex parte* presentations exempt under § 1.1204(a)) to or from Commission decision-making personnel are permissible in the following proceedings, which are referred to as permit-but-disclose proceedings, provided that *ex parte* presentations to Commission decision-making personnel are disclosed pursuant to paragraph (b) of this section:

NOTE 1 TO PARAGRAPH (a): In the case of petitions for declaratory ruling that seek Commission preemption of state or local regulatory authority and petitions for relief under 47 U.S.C. 332(c)(7)(B)(v), the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. Service should be made on those bodies within the state or local governments that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the ex parte rules unless the Commission determines that the matter should be entertained by making it part of the record under § 1.1212(d) and the parties are so informed.

(1) An informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act other than a proceeding for the allotment of a broadcast channel, upon release of a Notice of Proposed Rulemaking (see also § 1.1204(b)(2));

(2) A proceeding involving a rule change, policy statement or interpretive rule adopted without a Notice of Proposed Rule Making upon release of the order adopting the rule change, policy statement or interpretive rule;

(3) A declaratory ruling proceeding;

(4) A tariff proceeding which has been set for investigation under section 204 or 205 of the Communications Act (including directly associated waiver requests or requests for special permission) (see also § 1.1204(b)(4));

(5) Unless designated for hearing, a proceeding under section 214(a) of the Communications Act that does not also involve applications under Title III of the Communications Act (see also § 1.1208);

(6) Unless designated for hearing, a proceeding involving an application for a Cable Landing Act license that does not also involve applications under Title III of the Communications Act (see also § 1.1208);

(7) A proceeding involving a request for information filed pursuant to the Freedom of Information Act;

NOTE 2 TO PARAGRAPH (a): Where the requested information is the subject of a request for confidentiality, the person filing the request for confidentiality shall be deemed a party.

(8) A proceeding before a Joint Board or a proceeding before the Commission involving a recommendation from a Joint Board;

(9) A proceeding conducted pursuant to section 220(b) of the Communications Act for prescription of common carrier depreciation rates upon release of a public notice of specific proposed depreciation rates (see also § 1.1204(b)(4));

(10) A proceeding to prescribe a rate of return for common carriers under section 205 of the Communications Act; and

(11) A cable rate complaint proceeding pursuant to section 623(c) of the Communications Act where the complaint is filed on FCC Form 329.

(12) [Reserved]

(13) Petitions for Commission preemption of authority to review interconnection agreements under § 252(e)(5) of the Communications Act and petitions for preemption under § 253 of the Communications Act.

NOTE 3 TO PARAGRAPH (a): In a permit-but-disclose proceeding involving only one ''party,'' as defined in § 1.1202(d) of this section, the party and the Commission may freely make presentations to each other and need not comply with the disclosure requirements of paragraph (b) of this section.

(b) The following disclosure requirements apply to *ex parte* presentations in permit but disclose proceedings:

(1) *Oral presentations.* A person who makes an oral *ex parte* presentation subject to this section shall submit to the Commission's Secretary a memorandum that lists all persons attending

or otherwise participating in the meeting at which the *ex parte* presentation was made, and summarizes all data presented and arguments made during the oral *ex parte* presentation. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the oral *ex parte* presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.

NOTE TO PARAGRAPH (b)(1): Where, for example, presentations occur in the form of discussion at a widely attended meeting, preparation of a memorandum as specified in the rule might be cumbersome. Under these circumstances, the rule may be satisfied by submitting a transcript or recording of the discussion as an alternative to a memorandum. Likewise, Commission staff in its discretion may file an *ex parte* summary of a multiparty meeting as an alternative to having each participant file a summary.

(2) *Written and oral presentations.* A written *ex parte* presentation and a memorandum summarizing an oral *ex parte* presentation (and cover letter, if any) shall clearly identify the proceeding to which it relates, including the docket number, if any, and must be labeled as an *ex parte* presentation. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and, accordingly, must be filed consistent with the provisions of this section. Consistent with the requirements of §1.49 paragraphs (a) and (f), additional copies of all written *ex parte* presentations and notices of oral *ex parte* presentations, and any replies thereto, shall be mailed, e-mailed or transmitted by facsimile to the Commissioners or Commission employees who attended or otherwise participated in the presentation.

(i) In proceedings governed by §1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, shall, when feasible, be filed through the electronic comment filing system available for that proceeding, and shall be filed in a native format (e.g., .doc, .xml, .ppt, searchable .pdf). If electronic filing would present an undue hardship, the person filing must request an exemption from the electronic filing requirement, stating clearly the nature of the hardship, and submitting an original and one copy of the written *ex parte* presentation or memorandum summarizing an oral *ex parte* presentation to the Secretary, with a copy by mail or by electronic mail to the Commissioners or Commission employees who attended or otherwise participated in the presentation.

(ii) *Confidential Information.* In cases where a filer believes that one or more of the documents or portions thereof to be filed should be withheld from public inspection, the filer should file electronically a request that the information not be routinely made available for public inspection pursuant to §0.459 of this chapter. Accompanying any such request, the filer shall include in paper form a copy of the document(s) containing the confidential information, and also shall file electronically a copy of the same document(s) with the confidential information redacted. The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(iii) *Filing dates outside the Sunshine period.* Except as otherwise provided in paragraphs (b)(2)(iv) and (v) of this section, all written *ex parte* presentations and all summaries of oral *ex parte* presentations must be filed no later than two business days after the presentation. As set forth in §1.4(e)(2), a

''business day'' shall not include a holiday (as defined in §1.4(e)(1)). In addition, for purposes of computing time limits under the rules governing *ex parte* presentations, a ''business day'' shall include the full calendar day (*i.e.*, from 12:00 a.m. Eastern Time until 11:59:59 p.m. Eastern Time).

Example: On Tuesday a party makes an *ex parte* presentation in a permit-but-disclose proceeding to a Commissioner. The second business day following the *ex parte* presentation is the following Thursday (absent an intervening holiday). The presenting party must file its *ex parte* notice before the end of the day (11:59:59 p.m.) on Thursday. Similarly, if an *ex parte* presentation is made on Friday, the second business day ordinarily would be the following Tuesday, and the *ex parte* notice must be filed no later than 11:59:59 p.m. on that Tuesday.

(iv) *Filing dates for presentations made on the day that the Sunshine notice is released.* For presentations made on the day the Sunshine notice is released, any written *ex parte* presentation or memorandum summarizing an oral *ex parte* presentation required pursuant to §1.1206 or §1.1208 must be submitted no later than the end of the next business day. Written replies, if any, shall be filed no later than two business days following the presentation, and shall be limited in scope to the specific issues and information presented in the *ex parte* filing to which they respond.

Example: On Tuesday, a party makes an *ex parte* presentation in a permit-but-disclose proceeding to a Commissioner. That same day, the Commission's Secretary releases the Sunshine Agenda for the next Commission meeting and that proceeding appears on the Agenda. The Sunshine period begins as of Wednesday, and therefore the presenting party must file its *ex parte* notice by the end of the day (11:59:59 p.m.) on Wednesday. A reply would be due by the end of the day (11:59:59 p.m.) on Thursday.

(v) *Filing dates during the Sunshine Period.* If an *ex parte* presentation is made pursuant to an exception to the Sunshine period prohibition, the written *ex parte* presentation or memorandum summarizing an oral *ex parte* presentation required under this paragraph shall be submitted by the end of the same business day on which the *ex parte* presentation was made. The memorandum shall identify plainly on the first page the specific exemption in §1.1203(a) on which the presenter relies, and shall also state the date and time at which any oral *ex parte* presentation was made. Written replies to permissible *ex parte* presentations made pursuant to an exception to the Sunshine period prohibition, if any, shall be filed no later than the next business day following the presentation, and shall be limited in scope to the specific issues and information presented in the *ex parte* filing to which they respond.

Example: On Tuesday, the Commission's Secretary releases the Sunshine Agenda for the next Commission meeting, which triggers the beginning of the Sunshine period on Wednesday. On Thursday, a party makes an *ex parte* presentation to a Commissioner on a proceeding that appears on the Sunshine Agenda. That party must file an *ex parte* notice by the end of the day (11:59:59 p.m.) on Thursday. A reply would be due by the end of the day (11:59:59 p.m.) on Friday.

(vi) If a notice of an oral *ex parte* presentation is incomplete or inaccurate, staff may request the filer to correct any inaccuracies or missing information. Failure by the filer to file a corrected memorandum in a timely fashion as set forth in paragraph (b) of this section, or any other evidence of substantial or repeated violations of the rules on *ex parte* contacts, should be reported to the General Counsel.

(3) Notwithstanding paragraphs (b)(1) and (2) of this section, permit-but-disclose proceedings involving presentations made by members of Congress or their staffs or by an agency or branch of the Federal Government or its staff shall be treated as *ex parte* presentations only if the presentations are of substantial significance and clearly intended to affect the ultimate decision. The Commission staff shall prepare written summaries of any such oral presentations and place them in the record in accordance with paragraph (b) of this section and also place any written presentations in the record in accordance with that paragraph.

(4) *Notice of ex parte presentations.* The Commission's Secretary shall issue a public notice listing any written *ex parte* presentations or written summaries of oral *ex parte* presentations received by his or her office relating to any permit-but-disclose proceeding.

Such public notices generally should be released at least twice per week.

NOTE TO PARAGRAPH (b): Interested persons should be aware that some *ex parte* filings, for example, those not filed in accordance with the requirements of this paragraph (b), might not be placed on the referenced public notice. All *ex parte* presentations and memoranda filed under this section will be available for public inspection in the public file or record of the proceeding, and parties wishing to ensure awareness of all filings should review the public file or record.

[62 FR 15856, Apr. 3, 1997, as amended at 63 FR 24126, May 1, 1998; 64 FR 68948, Dec. 9, 1999; 66 FR 3501, Jan. 16, 2001; 76 FR 24382, May 2, 2011; 78 FR 11112, Feb. 15, 2013]

RESTRICTED PROCEEDINGS

§ 1.1208 Restricted proceedings.

Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a) *ex parte* presentations (other than *ex parte* presentations exempt under § 1.1204(a)) to or from Commission decision-making personnel are prohibited in all proceedings not listed as exempt in § 1.1204(b) or permit-but-disclose in § 1.1206(a) until the proceeding is no longer subject to administrative reconsideration or review or judicial review. Proceedings in which *ex parte* presentations are prohibited, referred to as ''restricted'' proceedings, include, but are not limited to, all proceedings that have been designated for hearing, proceedings involving amendments to the broadcast table of allotments, applications for authority under Title III of the Communications Act, and all waiver proceedings (except for those directly associated with tariff filings). A party making a written or oral presentation in a restricted proceeding, on a non-*ex parte* basis, must file a copy of the presentation or, for an oral presentation, a summary of the presentation in the record of the proceeding using procedures consistent with those specified in § 1.1206.

NOTE 1 TO § 1.1208: In a restricted proceeding involving only one ''party,'' as defined in § 1.1202(d), the party and the Commission may freely make presentations to each other because there is no other party to be served or with a right to have an opportunity to be present. See § 1.1202(b). Therefore, to determine whether presentations are permissible in a restricted proceeding without service or notice and an opportunity for other parties to be present the definition of a ''party'' should be consulted.

Examples: After the filing of an uncontested application or waiver request, the applicant or other filer would be the sole party to the proceeding. The filer would have no other party to serve with or give notice of any presentations to the Commission, and such presentations would therefore not be ''ex parte presentations'' as defined by § 1.1202(b) and would not be prohibited. On the other hand, in the example given, because the filer is a party, a third person who wished to make a presentation to the Commission concerning the application or waiver request would have to serve or notice the filer. Further, once the proceeding involved additional ''parties'' as defined by § 1.1202(d) (e.g., an opponent of the filer who served the opposition on the filer), the filer and other parties would have to serve or notice all other parties.

NOTE 2 TO § 1.1208: Consistent with § 1.1200(a), the Commission or its staff may determine that a restricted proceeding not designated for hearing involves primarily issues of broadly applicable policy rather than the rights and responsibilities of specific parties and specify that the proceeding will be conducted in accordance with the provisions of § 1.1206 governing permit-but-disclose proceedings.

[62 FR 15857, Apr. 3, 1997, as amended at 64 FR 68948, Dec. 9, 1999; 76 FR 24383, May 2, 2011]

PROHIBITION ON SOLICITATION OF PRESENTATIONS

§ 1.1210 Prohibition on solicitation of presentations.

No person shall solicit or encourage others to make any improper presentation under the provisions of this section.

[64 FR 68949, Dec. 9, 1999]

PROCEDURES FOR HANDLING OF PROHIBITED EX PARTE PRESENTATIONS

§ 1.1212 Procedures for handling of prohibited ex parte presentations.

(a) Commission personnel who believe that an oral presentation which is being made to them or is about to be made to them is prohibited shall promptly advise the person initiating the presentation that it is prohibited and shall terminate the discussion.

(b) Commission personnel who receive oral *ex parte* presentations which they believe are prohibited shall forward to the Office of General Counsel a

statement containing the following information:

(1) The name of the proceeding;

(2) The name and address of the person making the presentation and that person's relationship (if any) to the parties to the proceeding;

(3) The date and time of the presentation, its duration, and the circumstances under which it was made;

(4) A full summary of the substance of the presentation;

(5) Whether the person making the presentation persisted in doing so after being advised that the presentation was prohibited; and

(6) The date and time that the statement was prepared.

(c) Commission personnel who receive written *ex parte* presentations which they believe are prohibited shall forward them to the Office of General Counsel. If the circumstances in which the presentation was made are not apparent from the presentation itself, a statement describing those circumstances shall be submitted to the Office of General Counsel with the presentation.

(d) Prohibited written *ex parte* presentations and all documentation relating to prohibited written and oral *ex parte* presentations shall be placed in a public file which shall be associated with but not made part of the record of the proceeding to which the presentations pertain. Such materials may be considered in determining the merits of a restricted proceeding only if they are made part of the record and the parties are so informed.

(e) If the General Counsel determines that an *ex parte* presentation or presentation during the Sunshine period is prohibited by this subpart, he or she shall notify the parties to the proceeding that a prohibited presentation has occurred and shall serve on the parties copies of the presentation (if written) and any statements describing the circumstances of the presentation. Service by the General Counsel shall not be deemed to cure any violation of the rules against prohibited *ex parte* presentations.

(f) If the General Counsel determines that service on the parties would be unduly burdensome because the parties to the proceeding are numerous, he or she may issue a public notice in lieu of service. The public notice shall state that a prohibited presentation has been made and may also state that the presentation and related materials are available for public inspection.

(g) The General Counsel shall forward a copy of any statement describing the circumstances in which the prohibited *ex parte* presentation was made to the person who made the presentation. Within ten days thereafter, the person who made the presentation may file with the General Counsel a sworn declaration regarding the presentation and the circumstances in which it was made. The General Counsel may serve copies of the sworn declaration on the parties to the proceeding.

(h) Where a restricted proceeding precipitates a substantial amount of correspondence from the general public, the procedures in paragraphs (c) through (g) of this section will not be followed with respect to such correspondence. The correspondence will be placed in a public file and be made available for public inspection.

[62 FR 15857, Apr. 3, 1997]

§ 1.1214 Disclosure of information concerning violations of this subpart.

Any party to a proceeding or any Commission employee who has substantial reason to believe that any violation of this subpart has been solicited, attempted, or committed shall promptly advise the Office of General Counsel in writing of all the facts and circumstances which are known to him or her.

[62 FR 15858, Apr. 3, 1997]

SANCTIONS

§ 1.1216 Sanctions.

(a) *Parties*. Upon notice and hearing, any party to a proceeding who directly or indirectly violates or causes the violation of any provision of this subpart, or who fails to report the facts and circumstances concerning any such violation as required by this subpart, may be subject to sanctions as provided in paragraph (d) of this section, or disqualified from further participation in that proceeding. In proceedings other than a rulemaking, a party who has

violated or caused the violation of any provision of this subpart may be required to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected. In any proceeding, such alternative or additional sanctions as may be appropriate may also be imposed.

(b) *Commission personnel.* Commission personnel who violate provisions of this subpart may be subject to appropriate disciplinary or other remedial action as provided in part 19 of this chapter.

(c) *Other persons.* Such sanctions as may be appropriate under the circumstances shall be imposed upon other persons who violate the provisions of this subpart.

(d) *Penalties.* A party who has violated or caused the violation of any provision of this subpart may be subject to admonishment, monetary forfeiture, or to having his or her claim or interest in the proceeding dismissed, denied, disregarded, or otherwise adversely affected. In any proceeding, such alternative or additional sanctions as may be appropriate also may be imposed. Upon referral from the General Counsel following a finding of an *ex parte* violation pursuant to § 0.251(g) of this chapter, the Enforcement Bureau shall have delegated authority to impose sanctions in such matters pursuant to § 0.111(a)(15) of this chapter.

[62 FR 15858, Apr. 3, 1997, as amended at 76 FR 24383, May 2, 2011]

Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

SOURCE: 51 FR 15000, Apr. 22, 1986, unless otherwise noted.

§ 1.1301 Basis and purpose.

The provisions of this subpart implement Subchapter I of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4335.

§ 1.1302 Cross-reference; Regulations of the Council on Environmental Quality.

A further explanation regarding implementation of the National Environmental Policy Act is provided by the regulations issued by the Council on Environmental Quality, 40 CFR 1500–1508.28.

§ 1.1303 Scope.

The provisions of this subpart shall apply to all Commission actions that may or will have a significant impact on the quality of the human environment. To the extent that other provisions of the Commission's rules and regulations are inconsistent with the subpart, the provisions of this subpart shall govern.

[55 FR 20396, May 16, 1990]

§ 1.1304 Information, assistance, and waiver of electronic filing and service requirements.

(a) For general information and assistance concerning the provisions of this subpart, the Office of General Counsel may be contacted, (202) 418–1700. For more specific information, the Bureau responsible for processing a specific application should be contacted.

(b) All submissions relating to this subpart shall be made electronically. If an interested party is unable to submit or serve a filing electronically, or if it would be unreasonably burdensome to do so, such party may submit its filing on paper to the appropriate address for the Commission Secretary and serve the filing on other parties by mail. Such party should include as part of its paper submission a request for waiver of the electronic filing requirement. Such waiver request must contain an explanation addressing the requestor's inability to file electronically or why electronic filing would be unreasonably burdensome. Either showing will be sufficient to obtain a waiver under this section.

[85 FR 85530, Dec. 29, 2020]

§ 1.1305 Actions which normally will have a significant impact upon the environment, for which Environmental Impact Statements must be prepared.

Any Commission action deemed to have a significant effect upon the quality of the human environment requires the preparation of a Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS) (collectively referred to as EISs) (*see* §§1.1314, 1.1315 and 1.1317). The Commission has reviewed representative actions and has found no common pattern which would enable it to specify actions that will thus automatically require EISs.

NOTE: Our current application forms refer applicants to §1.1305 to determine if their proposals are such that the submission of environmental information is required (*see* §1.1311). Until the application forms are revised to reflect our new environmental rules, applicants should refer to §1.1307. Section 1.1307 now delineates those actions for which applicants must submit environmental information.

§ 1.1306 Actions which are categorically excluded from environmental processing.

(a) Except as provided in §1.1307 (c) and (d), Commission actions not covered by §1.1307 (a) and (b) are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing.

(b) Specifically, any Commission action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, provided such proposals do not:

(1) Involve a site location specified under §1.1307(a) (1)–(7), or

(2) Involve high intensity lighting under §1.1307(a)(8).

(3) Result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §1.1307(b).

(c)(1) Unless §1.1307(a)(4) is applicable, the provisions of §1.1307(a) requiring the preparation of EAs do not encompass the construction of wireless facilities, including deployments on new or replacement poles, if:

(i) The facilities will be located in a right-of-way that is designated by a Federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment;

(ii) The right-of-way is in active use for such designated purposes; and

(iii) The facilities would not

(A) Increase the height of the tower or non-tower structure by more than 10% or twenty feet, whichever is greater, over existing support structures that are located in the right-of-way within the vicinity of the proposed construction;

(B) Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;

(C) Add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or

(D) Involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

(2) Such wireless facilities are subject to §1.1307(b) and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in §1.1307(b).

NOTE 1: The provisions of §1.1307(a) requiring the preparation of EAs do not encompass the mounting of antenna(s) and associated equipment (such as wiring, cabling, cabinets, or backup-power), on or in an existing building, or on an antenna tower or other man-made structure, unless §1.1307(a)(4) is applicable. Such antennas are subject to §1.1307(b) of this part and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in §1.1307(b) of this part. The provisions of

§ 1.1307 (a) and (b) of this part do not encompass the installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use, established by the applicant or others. The use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged. The provisions of § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

NOTE 2: The specific height of an antenna tower or supporting structure, as well as the specific diameter of a satellite earth station, in and of itself, will not be deemed sufficient to warrant environmental processing, *see* § 1.1307 and § 1.1308, except as required by the Bureau pursuant to the Note to § 1.1307(d).

NOTE 3: The construction of an antenna tower or supporting structure in an established ''antenna farm'': (*i.e.*, an area in which similar antenna towers are clustered, whether or not such area has been officially designated as an antenna farm), will be categorically excluded unless *one or more of the antennas to be mounted on the tower or structure are subject to the provisions of § 1.1307(b) and the additional radiofrequency radiation from the antenna(s) on the new tower or structure* would cause human exposure in excess of the applicable health and safety *guidelines* cited in § 1.1307(b).

[51 FR 15000, Apr. 22, 1986, as amended at 51 FR 18889, May 23, 1986; 53 FR 28393, July 28, 1988; 56 FR 13414, Apr. 2, 1991; 64 FR 19061, Apr. 19, 1999; 77 FR 3952, Jan. 26, 2012; 80 FR 1268, Jan. 8, 2015]

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(a) Commission actions with respect to the following types of facilities may significantly affect the environment and thus require the preparation of EAs by the applicant (see §§ 1.1308 and 1.1311) and may require further Commission environmental processing (*see* §§ 1.1314, 1.1315 and 1.1317):

(1) Facilities that are to be located in an officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that: (i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

NOTE: The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and part 226. To ascertain the status of proposed species and habitats, inquiries may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places (*see* 54 U.S.C. 300308; 36 CFR parts 60 and 800), and that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in floodplains, if the facilities will not be placed at least one foot above the base flood elevation of the floodplain.

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, *see* Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(b)(1) *Requirements*. (i) With respect to the limits on human exposure to RF provided in § 1.1310 of this chapter, applicants to the Commission for the grant or modification of construction permits, licenses or renewals thereof, temporary authorities, equipment authorizations, or any other authorizations for radiofrequency sources must either:

(A) Determine that they qualify for an exemption pursuant to § 1.1307(b)(3);

(B) Prepare an evaluation of the human exposure to RF radiation pursuant to §1.1310 and include in the application a statement confirming compliance with the limits in §1.1310; or

(C) Prepare an Environmental Assessment if those RF sources would cause human exposure to levels of RF radiation in excess of the limits in §1.1310.

(ii) Compliance with these limits for fixed RF source(s) may be accomplished by use of mitigation actions, as provided in §1.1307(b)(4). Upon request by the Commission, the party seeking or holding such authorization must electronically submit technical information showing the basis for such compliance, either by exemption or evaluation. Notwithstanding the preceding requirements, in the event that RF sources cause human exposure to levels of RF radiation in excess of the limits in §1.1310 of this chapter, such RF exposure exemptions and evaluations are not deemed sufficient to show that there is no significant effect on the quality of the human environment or that the RF sources are categorically excluded from environmental processing.

(2) *Definitions*. For the purposes of this section, the following definitions shall apply.

Available maximum time-averaged power for an RF source is the maximum available RF power (into a matched load) as averaged over a *time-averaging period;*

Category One is any spatial region that is compliant with the general population exposure limit with *continuous exposure* or *source-based time-averaged exposure;*

Category Two is any spatial region where the general population exposure limit is exceeded but that is compliant with the occupational exposure limit with *continuous exposure;*

Category Three is any spatial region where the occupational exposure limit is exceeded but by no more than ten times the limit;

Category Four is any spatial region where the exposure is more than ten times the occupational exposure limit or where there is a possibility for serious injury on contact.

Continuous exposure refers to the maximum time-averaged exposure at a given location for an *RF source* and assumes that exposure may take place indefinitely. The exposure limits in §1.1310 of this chapter are used to establish the spatial regions where mitigation measures are necessary assuming continuous exposure as prescribed in §1.1307(b)(4) of this chapter.

Effective Radiated Power (*ERP*) is the product of the *maximum antenna gain* which is the largest far-field power gain relative to a dipole in any direction for each transverse polarization component, and the *maximum delivered time-averaged power* which is the largest net power delivered or supplied to an antenna as averaged over a *time-averaging period; ERP* is summed over two polarizations when present;

Exemption for (an) *RF source(s)* is solely from the obligation to perform a routine environmental evaluation to demonstrate compliance with the RF exposure limits in §1.1310 of this chapter; it is not exemption from the equipment authorization procedures described in part 2 of this chapter, not exemption from general obligations of compliance with the RF exposure limits in §1.1310 of this chapter, and not exemption from determination of whether there is no significant effect on the quality of the human environment under §1.1306 of this chapter.

Fixed RF source is one that is physically secured at one location, even temporarily, and is not able to be easily moved to another location while radiating;

Mobile device is as defined in §2.1091(b) of this chapter;

Plane-wave equivalent power density is the square of the root-mean-square (rms) electric field strength divided by the impedance of free space (377 ohms).

Portable device is as defined in §2.1093(b) of this chapter;

Positive access control is mitigation by proactive preclusion of unauthorized access to the region surrounding an RF source where the continuous exposure limit for the general population is exceeded. Examples of such controls include locked doors, ladder cages, or effective fences, as well as enforced prohibition of public access to external surfaces of buildings. However, it does

not include natural barriers or other access restrictions that did not require any action on the part of the licensee or property management.

Radiating structure is an unshielded RF current-carrying conductor that generates an RF reactive near electric or magnetic field and/or radiates an RF electromagnetic wave. It is the component of an *RF source* that transmits, generates, or reradiates an RF fields, such as an antenna, aperture, coil, or plate.

RF source is Commission-regulated equipment that transmits or generates RF fields or waves, whether intentionally or unintentionally, via one or more *radiating structure(s)*. Multiple *RF sources* may exist in a single *device*.

Separation distance (variable R in Table 1) is the minimum distance in any direction from any part of a *radiating structure* and any part of the body of a nearby person;

Source-based time averaging is an average of instantaneous exposure over a *time-averaging period* that is based on an inherent property or duty-cycle of a device to ensure compliance with the *continuous exposure* limits;

Time-averaging period is a time period not to exceed 30 minutes for fixed RF sources or a time period inherent from device transmission characteristics not to exceed 30 minutes for mobile and portable RF sources;

Transient individual is an untrained person in a location where occupational/controlled limits apply, and he or she must be made aware of the potential for exposure and be supervised by trained personnel pursuant to §1.1307(b)(4) of this chapter where use of time averaging is required to ensure compliance with the general population exposure limits in §1.1310 of this chapter.

(3) *Determination of exemption*. (i) For single RF sources (*i.e.*, any single fixed RF source, mobile device, or portable device, as defined in paragraph (b)(2) of this section): A single RF source is exempt if:

(A) The available maximum time-averaged power is no more than 1 mW, regardless of separation distance. This exemption may not be used in conjunction with other exemption criteria other than those in paragraph (b)(3)(ii)(A) of this section. Medical implant devices may only use this exemption and that in paragraph (b)(3)(ii)(A);

(B) Or the available maximum time-averaged power or effective radiated power (ERP), whichever is greater, is less than or equal to the threshold P_{th} (mW) described in the following formula. This method shall only be used at separation distances (cm) from 0.5 centimeters to 40 centimeters and at frequencies from 0.3 GHz to 6 GHz (inclusive). P_{th} is given by:

$$P_{th}\ (\text{mW}) = \begin{cases} ERP_{20\ cm}(d/20\ \text{cm})^x & d \leq 20\ \text{cm} \\ ERP_{20\ cm} & 20\ \text{cm} < d \leq 40\ \text{cm} \end{cases}$$

Where

$$x = -\log_{10}\left(\frac{60}{ERP_{20\ cm}\sqrt{f}}\right) \text{ and } f \text{ is in GHz;}$$

and

$$ERP_{20\ cm}\ (\text{mW}) = \begin{cases} 2040f & 0.3\ \text{GHz} \leq f < 1.5\ \text{GHz} \\ 3060 & 1.5\ \text{GHz} \leq f \leq 6\ \text{GHz} \end{cases}$$

d = the separation distance (cm);

(C) Or using Table 1 and the minimum separation distance (R in meters) from the body of a nearby person for the frequency (f in MHz) at which the source operates, the ERP (watts) is no more than the calculated value prescribed for that frequency. For the exemption in Table 1 to apply, R must be at least $\lambda/2\pi$, where λ is the free-space operating wavelength in meters. If the ERP of a single RF source is not easily obtained, then the available maximum time-averaged power may be used in lieu of ERP if the physical dimensions of the radiating structure(s) do not exceed the electrical length of $\lambda/4$ or if the antenna gain is less than that of a half-wave dipole (1.64 linear value).

TABLE 1 TO § 1.1307(b)(3)(i)(C)—SINGLE RF SOURCES SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

RF Source frequency (MHz)	Threshold ERP (watts)
0.3–1.34	1,920 R^2.
1.34–30	3,450 R^2/f^2.
30–300	3.83 R^2.
300–1,500	0.0128 R^2f.
1,500–100,000	19.2R^2.

(ii) For multiple RF sources: Multiple RF sources are exempt if:

(A) The available maximum time-averaged power of each source is no more than 1 mW and there is a separation distance of two centimeters between any portion of a radiating structure operating and the nearest portion of any other radiating structure in the same device, except if the sum of multiple sources is less than 1 mW during the time-averaging period, in which case they may be treated as a single source (separation is not required). This exemption may not be used in conjunction with other exemption criteria other than those is paragraph (b)(3)(i)(A) of this section. Medical implant devices may only use this exemption and that in paragraph (b)(3)(i)(A).

(B) in the case of fixed RF sources operating in the same time-averaging period, or of multiple mobile or portable RF sources within a device operating in the same time averaging period, if the sum of the fractional contributions to the applicable thresholds is less than or equal to 1 as indicated in the following equation.

$$\sum_{i=1}^{a}\frac{P_i}{P_{th,i}}+\sum_{j=1}^{b}\frac{ERP_j}{ERP_{th,j}}+\sum_{k=1}^{c}\frac{Evaluated_k}{Exposure\ Limit_k}\leq 1$$

Where:

a = number of fixed, mobile, or portable RF sources claiming exemption using paragraph (b)(3)(i)(B) of this section for P_{th}, including existing exempt transmitters and those being added.

b = number of fixed, mobile, or portable RF sources claiming exemption using paragraph (b)(3)(i)(C) of this section for Threshold ERP, including existing exempt transmitters and those being added.

c = number of existing fixed, mobile, or portable RF sources with known evaluation for the specified minimum distance including existing evaluated transmitters.

P_i = the available maximum time-averaged power or the ERP, whichever is greater, for fixed, mobile, or portable RF source i at a distance between 0.5 cm and 40 cm (inclusive).

$P_{th,i}$ = the exemption threshold power (P_{th}) according to paragraph (b)(3)(i)(B) of this section for fixed, mobile, or portable RF source i.

ERP_j = the ERP of fixed, mobile, or portable RF source j.

$ERP_{th,j}$ = exemption threshold ERP for fixed, mobile, or portable RF source j, at a distance of at least $\lambda/2\pi$ according to the applicable formula of paragraph (b)(3)(i)(C) of this section.

$Evaluated_k$ = the maximum reported SAR or MPE of fixed, mobile, or portable RF source k either in the device or at the transmitter site from an existing evaluation at the location of exposure.

$Exposure\ Limit_k$ = either the general population/uncontrolled maximum permissible exposure (MPE) or specific absorption rate (SAR) limit for each fixed, mobile, or portable RF source k, as applicable from § 1.1310 of this chapter.

(4) *Mitigation*. (i) As provided in paragraphs (b)(4)(ii) through (vi) of this section, specific mitigation actions are required for fixed RF sources to the extent necessary to ensure compliance with our exposure limits, including the implementation of an RF safety plan, restriction of access to those RF sources, and disclosure of spatial regions where exposure limits are exceeded.

(ii) Category One—INFORMATION: No mitigation actions are required when the RF source does not cause continuous or source-based time-averaged exposure in excess of the general population limit in s§ 1.1310 of this part. Optionally a green ''INFORMATION'' sign may offer information to those persons who might be approaching RF sources. This optional sign, when used, must include at least the following information: Appropriate signal word ''INFORMATION'' and associated color (green), an explanation of the safety precautions to be observed when closer to the antenna than the information sign, a reminder to obey all postings and boundaries (if higher categories are nearby), up-to-date licensee (or operator) contact information (if higher categories are nearby), and a place to get additional information (such as a website, if no higher categories are nearby).

(iii) Category Two—NOTICE: Mitigation actions are required in the form of signs and positive access control surrounding the boundary where the continuous exposure limit is exceeded for the general population, with the appropriate signal word ''NOTICE'' and associated color (blue) on the signs. Signs must contain the components discussed in paragraph (b)(4)(vi) of this section. Under certain controlled conditions, such as on a rooftop with limited access, a sign attached directly to the surface of an antenna will be considered sufficient if the sign specifies a minimum approach distance and is readable at this separation distance and at locations required for compliance with the general population exposure limit in § 1.1310 of this part. Appropriate training is required for any occupational personnel with access to controlled areas within restrictive barriers where the general population exposure limit is exceeded, and transient individuals must be supervised by trained occupational personnel upon entering any of these areas. Use of time averaging is required for transient individuals to ensure compliance

with the general population exposure limit.

(iv) Category Three—CAUTION: Signs (with the appropriate signal word ''CAUTION'' and associated color (yellow) on the signs), controls, or indicators (*e.g.*, chains, railings, contrasting paint, diagrams) are required (in addition to the positive access control established for Category Two) surrounding the area in which the exposure limit for occupational personnel in a controlled environment is exceeded by no more than a factor of ten. Signs must contain the components discussed in paragraph (b)(4)(vi) of this section. If the boundaries between Category Two and Three are such that placement of both Category Two and Three signs would be in the same location, then the Category Two sign is optional. Under certain controlled conditions, such as on a rooftop with limited access, a sign may be attached directly to the surface of an antenna within a controlled environment if it specifies the minimum approach distance and is readable at this distance and at locations required for compliance with the occupational exposure limit in §1.1310 of this part. If signs are not used at the occupational exposure limit boundary, controls or indicators (*e.g.*, chains, railings, contrasting paint, diagrams, *etc.*) must designate the boundary where the occupational exposure limit is exceeded. Additionally, appropriate training is required for any occupational personnel with access to the controlled area where the general population exposure limit is exceeded, and transient individuals must be supervised by trained personnel upon entering any of these areas. Use of time averaging is required for transient individuals to ensure compliance with the general population exposure limit. Further mitigation by reducing exposure time in accord with six-minute time averaging is required for occupational personnel in the area in which the occupational exposure limit is exceeded. However, proper use of RF personal protective equipment may be considered sufficient in lieu of time averaging for occupational personnel in the areas in which the occupational exposure limit is exceeded. If such procedures or power reduction, and therefore Category reduction, are not feasible, then lockout/tagout procedures in 29 CFR 1910.147 must be followed.

(v) Category Four—WARNING/DANGER: Where the occupational limit could be exceeded by a factor of more than ten, ''WARNING'' signs with the associated color (orange), controls, or indicators (*e.g.*, chains, railings, contrasting paint, diagrams) are required (in addition to the positive access control established for Category Two) surrounding the area in which the occupational exposure limit in a controlled environment is exceeded by more than a factor of ten Signs must contain the components discussed in paragraph (b)(4)(vi) of this section. ''DANGER'' signs with the associated color (red) are required where immediate and serious injury will occur on contact, in addition to positive access control, regardless of mitigation actions taken in Categories Two or Three. If the boundaries between Category Three and Four are such that placement of both Category Three and Four signs would be in the same location, then the Category Three sign is optional. No access is permitted without Category reduction. If power reduction, and therefore Category reduction, is not feasible, then lockout/tagout procedures in 29 CFR 1910.147 must be followed.

(vi) RF exposure advisory signs must be viewable and readable from the boundary where the applicable exposure limits are exceeded, pursuant to 29 CFR 1910.145, and include at least the following five components:

(A) Appropriate signal word, associated color {*i.e.*, {DANGER'' (red), ''WARNING'' (orange), ''CAUTION,'' (yellow) ''NOTICE'' (blue)};

(B) RF energy advisory symbol;

(C) An explanation of the RF source;

(D) Behavior necessary to comply with the exposure limits; and

(E) Up-to-date contact information.

(5) *Responsibility for compliance.* (i) In general, when the exposure limits specified in §1.1310 of this part are exceeded in an accessible area due to the emissions from multiple fixed RF sources, actions necessary to bring the area into compliance or preparation of an Environmental Assessment (EA) as specified in §1.1311 of this part are the shared responsibility of all licensees

whose RF sources produce, at the area in question, levels that exceed 5% of the applicable exposure limit proportional to power. However, a licensee demonstrating that its facility was not the most recently modified or newly-constructed facility at the site establishes a rebuttable presumption that such licensee should not be liable in an enforcement proceeding relating to the period of non-compliance. Field strengths must be squared to be proportional to SAR or power density. Specifically, these compliance requirements apply if the square of the electric or magnetic field strength exposure level applicable to a particular RF source exceeds 5% of the square of the electric or magnetic field strength limit at the area in question where the levels due to multiple fixed RF sources exceed the exposure limit. Site owners and managers are expected to allow applicants and licensees to take reasonable steps to comply with the requirements contained in paragraph (b)(1) of this section and, where feasible, should encourage co-location of RF sources and common solutions for controlling access to areas where the RF exposure limits contained in § 1.1310 of this part might be exceeded. Applicants and licensees are required to share technical information necessary to ensure joint compliance with the exposure limits, including informing other licensees at a site in question of evaluations indicating possible non-compliance with the exposure limits.

(ii) Applicants for proposed RF sources that would cause non-compliance with the limits specified in § 1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's RF source would produce, at the area in question, levels that exceed 5% of the applicable exposure limit. Field strengths must be squared if necessary to be proportional to SAR or power density.

(iii) Renewal applicants whose RF sources would cause non-compliance with the limits specified in § 1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's RF source would produce, at the area in question, levels that exceed 5% of the applicable exposure limit. Field strengths must be squared if necessary to be proportional to SAR or power density.

(c) If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall electronically submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. If an interested person is unable to submit electronically or if filing electronically would be unreasonably burdensome, such person may submit the petition by mail, with a request for waiver under § 1.1304(b). (See § 1.1313). The Bureau shall review the petition and consider the environmental concerns that have been raised. If the Bureau determines that the action may have a significant environmental impact, the Bureau will require the applicant to prepare an EA (*see* §§ 1.1308 and 1.1311), which will serve as the basis for the determination to proceed with or terminate environmental processing.

(d) If the Bureau responsible for processing a particular action, otherwise categorically excluded, determines that the proposal may have a significant environmental impact, the Bureau, on its own motion, shall require the applicant to electronically submit an EA. The Bureau will review and consider the EA as in paragraph (c) of this section.

NOTE TO PARAGRAPH (d): Pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under part 17 of this chapter, if the proposed antenna structure will be over 450 feet in height above ground level (AGL) and involves either:

1. Construction of a new antenna structure;
2. Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in paragraph I(C)(1)(3) of Appendix B to part 1 of this chapter; or
3. Addition of lighting or adoption of a less preferred lighting style as defined in § 17.4(c)(1)(iii) of this chapter. The Bureau

shall consider whether to require an EA for other antenna structures subject to §17.4(c) of this chapter in accordance with §17.4(c)(8) of this chapter. An Environmental Assessment required pursuant to this note will be subject to the same procedures that apply to any Environmental Assessment required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in §17.4(c) of this chapter.

(e) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph:

(1) The term *personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term *personal wireless service facilities* means facilities for the provision of personal wireless services;

(3) The term *unlicensed wireless services* means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term *direct-to-home satellite services* means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

[51 FR 15000, Apr. 22, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.1307, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§1.1308 Consideration of environmental assessments (EAs); findings of no significant impact.

(a) Applicants shall prepare EAs for actions that may have a significant environmental impact (*see* §1.1307). An EA is described in detail in §1.1311 of this part of the Commission rules.

(b) The EA is a document which shall explain the environmental consequences of the proposal and set forth sufficient analysis for the Bureau or the Commission to reach a determination that the proposal will or will not have a significant environmental effect. To assist in making that determination, the Bureau or the Commission may request further information from the applicant, interested persons, and agencies and authorities which have jurisdiction by law or which have relevant expertise.

NOTE: With respect to actions specified under §1.1307 (a)(3) and (a)(4), the Commission shall solicit and consider the comments of the Department of Interior, and the State Historic Preservation Officer and the Advisory Council on Historic Preservation, respectively, in accordance with their established procedures. *See* Interagency Cooperation—Endangered Species Act of 1973, as amended, 50 CFR part 402; Protection of Historic and Cultural Properties, 36 CFR part 800. In addition, when an action interferes with or adversely affects an American Indian tribe's religious site, the Commission shall solicit the views of that American Indian tribe. *See* §1.1307(a)(5).

(c) If the Bureau or the Commission determines, based on an independent review of the EA and any applicable mandatory consultation requirements imposed upon Federal agencies (*see* note above), that the proposal will have a significant environmental impact upon the quality of the human environment, it will so inform the applicant. The applicant will then have an opportunity to amend its application so as to reduce, minimize, or eliminate environmental problems. *See* §1.1309. If the environmental problem is not eliminated, the Bureau will publish in the FEDERAL REGISTER a Notice of Intent (*see* §1.1314) that EISs will be prepared (*see* §§1.1315 and 1.1317), or

(d) If the Bureau or Commission determines, based on an independent review of the EA, and any mandatory consultation requirements imposed upon Federal agencies (*see* the note to paragraph (b) of this section), that the proposal would not have a significant impact, it will make a finding of no

significant impact. Thereafter, the application will be processed without further documentation of environmental effect. Pursuant to CEQ regulations, *see* 40 CFR 1501.4 and 1501.6, the applicant must provide the community notice of the Commission's finding of no significant impact.

[51 FR 15000, Apr. 22, 1986; 51 FR 18889, May 23, 1986, as amended at 53 FR 28394, July 28, 1988]

§ 1.1309 Application amendments.

Applicants are permitted to amend their applications to reduce, minimize, or eliminate potential environmental problems. Amendments shall be made electronically. As a routine matter, an applicant will be permitted to amend its application within thirty (30) days after the Commission or the Bureau informs the applicant that the proposal will have a significant impact upon the quality of the human environment (*see* § 1.1308(c)). The period of thirty (30) days may be extended upon a showing of good cause.

[85 FR 85530, Dec. 29, 2020]

§ 1.1310 Radiofrequency radiation exposure limits.

(a) Specific absorption rate (SAR) shall be used to evaluate the environmental impact of human exposure to radiofrequency (RF) radiation as specified in § 1.1307(b) of this part within the frequency range of 100 kHz to 6 GHz (inclusive).

(b) The SAR limits for occupational/controlled exposure are 0.4 W/kg, as averaged over the whole body, and a peak spatial-average SAR of 8 W/kg, averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube). Exceptions are the parts of the human body treated as extremities, such as hands, wrists, feet, ankles, and pinnae, where the peak spatial-average SAR limit for occupational/controlled exposure is 20 W/kg, averaged over any 10 grams of tissue (defined as a tissue volume in the shape of a cube). Exposure may be averaged over a time period not to exceed 6 minutes to determine compliance with occupational/controlled SAR limits.

(c) The SAR limits for general population/uncontrolled exposure are 0.08 W/kg, as averaged over the whole body, and a peak spatial-average SAR of 1.6 W/kg, averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube). Exceptions are the parts of the human body treated as extremities, such as hands, wrists, feet, ankles, and pinnae, where the peak spatial-average SAR limit is 4 W/kg, averaged over any 10 grams of tissue (defined as a tissue volume in the shape of a cube). Exposure may be averaged over a time period not to exceed 30 minutes to determine compliance with general population/uncontrolled SAR limits.

(d)(1) Evaluation with respect to the SAR limits in this section must demonstrate compliance with both the whole-body and peak spatial-average limits using technically supported measurement or computational methods and exposure conditions in advance of authorization (licensing or equipment certification) and in a manner that facilitates independent assessment and, if appropriate, enforcement. Numerical computation of SAR must be supported by adequate documentation showing that the numerical method as implemented in the computational software has been fully validated; in addition, the equipment under test and exposure conditions must be modeled according to protocols established by FCC-accepted numerical computation standards or available FCC procedures for the specific computational method.

(2) For operations within the frequency range of 300 kHz and 6 GHz (inclusive), the limits for maximum permissible exposure (MPE), derived from whole-body SAR limits and listed in Table 1 in paragraph (e)(1) of this section, may be used instead of whole-body SAR limits as set forth in paragraphs (a) through (c) of this section to evaluate the environmental impact of human exposure to RF radiation as specified in § 1.1307(b) of this part, except for portable devices as defined in § 2.1093 of this chapter as these evaluations shall be performed according to the SAR provisions in § 2.1093.

(3) At operating frequencies above 6 GHz, the MPE limits listed in Table 1 in paragraph (e)(1) of this section shall

be used in all cases to evaluate the environmental impact of human exposure to RF radiation as specified in §1.1307(b) of this part.

(4) Both the MPE limits listed in Table 1 in paragraph (e)(1) of this section and the SAR limits as set forth in paragraphs (a) through (c) of this section are for continuous exposure, that is, for indefinite time periods. Exposure levels higher than the limits are permitted for shorter exposure times, as long as the average exposure over a period not more than the specified averaging time in Table 1 in paragraph (e)(1) is less than (or equal to) the exposure limits. Detailed information on our policies regarding procedures for evaluating compliance with all of these exposure limits can be found in the most recent edition of FCC's *OET Bulletin 65*, ''Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields,'' and its supplements, all available at the FCC's internet website: *https://www.fcc.gov/general/oet-bulletins-line*, and in the Office of Engineering and Technology (OET) Laboratory Division Knowledge Database (KDB) (*https://www.fcc.gov/kdb*).

NOTE TO PARAGRAPHS (a) THROUGH (d): SAR is a measure of the rate of energy absorption due to exposure to RF electromagnetic energy. These SAR limits to be used for evaluation are based generally on criteria published by the American National Standards Institute (ANSI) for localized SAR in Section 4.2 of ''IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,'' ANSI/IEEE Std C95.1–1992, copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017. These criteria for SAR evaluation are similar to those recommended by the National Council on Radiation Protection and Measurements (NCRP) in ''Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,'' NCRP Report No. 86, Section 17.4.5, copyright 1986 by NCRP, Bethesda, Maryland 20814. Limits for whole body SAR and peak spatial-average SAR are based on recommendations made in both of these documents. The MPE limits in Table 1 are based generally on criteria published by the NCRP in ''Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields,'' NCRP Report No. 86, Sections 17.4.1, 17.4.1.1, 17.4.2 and 17.4.3, copyright 1986 by NCRP, Bethesda, Maryland 20814. In the frequency range from 100 MHz to 1500 MHz, these MPE exposure limits for field strength and power density are also generally based on criteria recommended by the ANSI in Section 4.1 of ''IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz,'' ANSI/IEEE Std C95.1–1992, copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017.

(e)(1) Table 1 to §1.1310(e)(1) sets forth limits for Maximum Permissible Exposure (MPE) to radiofrequency electromagnetic fields.

TABLE 1 TO §1.1310(E)(1)—LIMITS FOR MAXIMUM PERMISSIBLE EXPOSURE (MPE)

Frequency range (MHz)	Electric field strength (V/m)	Magnetic field strength (A/m)	Power density (mW/cm^2)	Averaging time (minutes)
(i) Limits for Occupational/Controlled Exposure				
0.3–3.0	614	1.63	*(100)	≤6
3.0–30	1842/f	4.89/f	*(900/f^2)	<6
30–300	61.4	0.163	1.0	<6
300–1,500			f/300	<6
1,500–100,000			5	<6
(ii) Limits for General Population/Uncontrolled Exposure				
0.3–1.34	614	1.63	*(100)	<30
1.34–30	824/f	2.19/f	*(180/f^2)	<30
30–300	27.5	0.073	0.2	<30
300–1,500			f/1500	<30
1,500–100,000			1.0	<30

f = frequency in MHz. * = Plane-wave equivalent power density.

(2) Occupational/controlled exposure limits apply in situations in which persons are exposed as a consequence of

their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure. The phrase *fully aware* in the context of applying these exposure limits means that an exposed person has received written and/or verbal information fully explaining the potential for RF exposure resulting from his or her employment. With the exception of *transient* persons, this phrase also means that an exposed person has received appropriate training regarding work practices relating to controlling or mitigating his or her exposure. In situations when an untrained person is transient through a location where occupational/controlled limits apply, he or she must be made aware of the potential for exposure and be supervised by trained personnel pursuant to §1.1307(b)(2) of this part where use of time averaging is required to ensure compliance with the general population exposure limit. The phrase *exercise control* means that an exposed person is allowed and also knows how to reduce or avoid exposure by administrative or engineering work practices, such as use of personal protective equipment or time averaging of exposure.

(3) General population/uncontrolled exposure limits apply in situations in which the general public may be exposed, or in which persons who are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure. For example, RF sources intended for consumer use shall be subject to the limits for general population/uncontrolled exposure in this section.

[85 FR 18145, Apr. 1, 2020]

§ 1.1311 Environmental information to be included in the environmental assessment (EA).

(a) The applicant shall submit an EA with each application that is subject to environmental processing (*see* §1.1307). The EA shall contain the following information:

(1) For antenna towers and satellite earth stations, a description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.

(2) A statement as to the zoning classification of the site, and communications with, or proceedings before and determinations (if any) made by zoning, planning, environmental or other local, state or Federal authorities on matters relating to environmental effect.

(3) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.

(4) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility; the nature and extent of any unavoidable adverse environmental effects, and any alternative sites or facilities which have been or might reasonably be considered.

(5) Any other information that may be requested by the Bureau or Commission.

(6) If endangered or threatened species or their critical habitats may be affected, the applicant's analysis must utilize the best scientific and commercial data available, *see* 50 CFR 402.14(c).

(b) The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission or Bureau, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (e.g., wilderness areas, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed, or eligible for listing, in the National Register of Historic Places. It shall also detail any substantial change in the character of the land utilized (e.g., deforestation,

water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (e.g., necessitated by the operation and maintenance of the facilities).

(c) The EA shall also be accompanied with evidence of site approval which has been obtained from local or Federal land use authorities.

(d) To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.

(e) An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility for determining whether of the facilities in question will have a significant effect on the quality of the human environment and, if it will, for invoking the environmental impact statement process.

[51 FR 15000, Apr. 22, 1986, as amended at 51 FR 18889, May 23, 1986; 53 FR 28394, July 28, 1988]

§ 1.1312 Facilities for which no preconstruction authorization is required.

(a) In the case of facilities for which no Commission authorization prior to construction is required by the Commission's rules and regulations the licensee or applicant shall initially ascertain whether the proposed facility may have a significant environmental impact as defined in § 1.1307 of this part or is categorically excluded from environmental processing under § 1.1306 of this part.

(b) If a facility covered by paragraph (a) of this section may have a significant environmental impact, the information required by § 1.1311 shall be submitted electronically by the licensee or applicant and ruled on by the Commission, and environmental processing (if invoked) shall be completed, see § 1.1308, prior to the initiation of construction of the facility.

(c) If a facility covered by paragraph (a) of this section is categorically excluded from environmental processing, the licensee or applicant may proceed with construction and operation of the facility in accordance with the applicable licensing rules and procedures.

(d) If, following the initiation of construction under this section, the licensee or applicant discovers that the proposed facility may have a significant environmental effect, it shall immediately cease construction which may have that effect, and submit the information required by § 1.1311 of this part. The Commission shall rule on that submission and complete further environmental processing (if invoked), see § 1.1308 of this part, before such construction is resumed.

(e) Paragraphs (a) through (d) of this section shall not apply to the construction of mobile stations.

[55 FR 20396, May 16, 1990, as amended at 56 FR 13414, Apr. 2, 1991; 83 FR 19458, May 3, 2018; 84 FR 59567, Nov. 5, 2019; 85 FR 85531, Dec. 29, 2020]

§ 1.1313 Objections.

(a) In the case of an application to which section 309(b) of the Communications Act applies, objections based on environmental considerations shall be filed electronically as petitions to deny. If the interested person is unable to file electronically or if filing electronically would be unreasonably burdensome, such person may submit the petition by mail, with a request for waiver under § 1.1304(b).

(b) Informal objections which are based on environmental considerations must be filed electronically prior to grant of the construction permit, or prior to authorization for facilities that do not require construction permits, or pursuant to the applicable rules governing services subject to lotteries. If the interested person is unable to file electronically or if filing electronically would be unreasonably burdensome, such person may submit the objection by mail, with a request for waiver under § 1.1304(b).

[85 FR 85531, Dec. 29, 2020]

§ 1.1314 Environmental impact statements (EISs).

(a) Draft Environmental Impact Statements (DEISs) (§ 1.1315) and Final Environmental Impact Statements (FEISs) (referred to collectively as EISs) (§ 1.1317) shall be prepared by the

Bureau responsible for processing the proposal when the Commission's or the Bureau's analysis of the EA (§ 1.1308) indicates that the proposal will have a significant effect upon the environment and the matter has not been resolved by an amendment.

(b) As soon as practically feasible, the Bureau will publish in the FEDERAL REGISTER a Notice of Intent to prepare EISs. The Notice shall briefly identify the proposal, concisely describe the environmental issues and concerns presented by the subject application, and generally invite participation from affected or involved agencies, authorities and other interested persons.

(c) The EISs shall not address non-environmental considerations. To safeguard against repetitive and unnecessarily lengthy documents, the Statements, where feasible, shall incorporate by reference material set forth in previous documents, with only a brief summary of its content. In preparing the EISs, the Bureau will identify and address the significant environmental issues and eliminate the insignificant issues from analysis.

(d) To assist in the preparation of the EISs, the Bureau may request further information from the applicant, interested persons and agencies and authorities, which have jurisdiction by law or which have relevant expertise. The Bureau may direct that technical studies be made by the applicant and that the applicant obtain expert opinion concerning the potential environmental problems and costs associated with the proposed action, as well as comparative analyses of alternatives. The Bureau may also consult experts in an effort to identify measures that could be taken to minimize the adverse effects and alternatives to the proposed facilities that are not, or are less, objectionable. The Bureau may also direct that objections be raised with appropriate local, state or Federal land use agencies or authorities (if their views have not been previously sought).

(e) The Bureau responsible for processing the particular application and, thus, preparing the EISs shall draft supplements to Statements where significant new circumstances occur or information arises relevant to environmental concerns and bearing upon the application.

(f) The Application, the EA, the DEIS, and the FEIS and all related documents, including the comments filed by the public and any agency, shall be part of the administrative record and will be routinely available for public inspection. All documents and comments shall be filed electronically.

(g) If EISs are to be prepared, the applicant must provide the community with notice of the availability of environmental documents and the scheduling of any Commission hearings in that action.

(h) The timing of agency action with respect to applications subject to EISs is set forth in 40 CFR 1506.10. No decision shall be made until ninety (90) days after the Notice of Availability of the Draft Environmental Impact Statement is published in the Federal Register, and thirty (30) days after the Notice of Availability of the Final Environmental Impact Statement is published in the FEDERAL REGISTER, which time period may run concurrently, *See* 40 CFR 1506.10(c); *see also* §§ 1.1315(b) and 1.1317(b).

(i) Guidance concerning preparation of the Draft and Final Environmental Statements is set out in 40 CFR part 1502.

[51 FR 15000, Apr. 22, 1986, as amended at 53 FR 28394, July 28, 1988; 85 FR 85531, Dec. 29, 2020]

§ 1.1315 The Draft Environmental Impact Statement (DEIS); Comments.

(a) The DEIS shall include:

(1) A concise description of the proposal, the nature of the area affected, its uses, and any specific feature of the area that has special environmental significance;

(2) An analysis of the proposal, and reasonable alternatives exploring the important consequent advantages and/or disadvantages of the action and indicating the direct and indirect effects and their significance in terms of the short and long-term uses of the human environment.

(b) When a DEIS and supplements, if any, are prepared, the Commission shall file the Statement with the Office of Federal Activities, Environmental

Protection Agency, consistent with its procedures. Public Notice of the availability of the DEIS will be published in the FEDERAL REGISTER by the Environmental Protection Agency.

(c) When copies or summaries of the DEIS are sent to the Environmental Protection Agency, the copies or summaries will be electronically mailed with a request for comment to Federal agencies having jurisdiction by law or special expertise, to the Council on Environmental Quality, to the applicant, to individuals, groups and state and local agencies known to have an interest in the environmental consequences of a grant, and to any other person who has requested a copy. If an interested person lacks access to electronic mail and requests a hard copy or summary of the DEIS, it must be provided by mail.

(d) Any person or agency may comment on the DEIS and the environmental effect of the proposal described therein within 45 days after notice of the availability of the statement is published in the FEDERAL REGISTER. A copy of those comments shall be electronically mailed to the applicant by the person who files them pursuant to §1.47 and filed electronically with the Commission. If the interested person is unable to file electronically or mail the copy electronically, or if it would be unreasonably burdensome to do so, such person may submit the comments to the Commission and the applicant by mail, with a request for waiver under §1.1304(b). If a person submitting comments is especially qualified in any way to comment on the environmental impact of the facilities, a statement of his or her qualifications shall be set out in the comments. In addition, comments submitted by an agency shall identify the person(s) who prepared them.

(e) The applicant may electronically file reply comments within 15 days after the time for filing comments has expired. Reply comments shall be filed with the Commission and served by the applicant on persons or agencies which filed comments.

(f) The preparation of a DEIS and the request for comments shall not open the application to attack on other grounds.

[51 FR 15000, Apr. 22, 1986, as amended at 85 FR 85531, Dec. 29, 2020]

§1.1317 The Final Environmental Impact Statement (FEIS).

(a) After receipt of comments and reply comments, the Bureau will prepare a FEIS, which shall include a summary of the comments, and a response to the comments, and an analysis of the proposal in terms of its environmental consequences, and any reasonable alternatives, and recommendations, if any, and shall cite the Commission's internal appeal procedures (*See* 47 CFR 1.101–1.117).

(b) The FEIS and any supplements will be distributed and published in the same manner as specified in §1.1315. Copies of the comments and reply comments, or summaries thereof where the record is voluminous, shall be attached to the FEIS.

[51 FR 15000, Apr. 22, 1986, as amended at 76 FR 70909, Nov. 16, 2011]

§1.1319 Consideration of the environmental impact statements.

(a) If the action is designated for hearing:

(1) In rendering an initial decision, the presiding officer (other than the Commission) shall use the FEIS in considering the environmental issues, together with all other non-environmental issues.

(2) When the Commission serves as the presiding officer or upon its review of an initial decision, the Commission will consider and assess all aspects of the FEIS and will render its decision, giving due consideration to the environmental and nonenvironmental issues.

(b) In all non-hearing matters, the Commission, as part of its decision-making process, will review the FEIS, along with other relevant issues, to ensure that the environmental effects are specifically assessed and given comprehensive consideration.

[51 FR 15000, Apr. 22, 1986, as amended at 62 FR 4171, Jan. 29, 1997; 85 FR 63183, Oct. 6, 2020]

§ 1.1320 Review of Commission undertakings that may affect historic properties.

(a) *Review of Commission undertakings.* Any Commission undertaking that has the potential to cause effects on historic properties, unless excluded from review pursuant to paragraph (b) of this section, shall be subject to review under section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. 306108, by applying—

(1) The procedures set forth in regulations of the Advisory Council on Historic Preservation, 36 CFR800.3–800.13, or

(2) If applicable, a program alternative established pursuant to 36 CFR 800.14, including but not limited to the following:

(i) The Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended, Appendix B of this part.

(ii) The Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings, Appendix C of this part.

(iii) The Program Comment to Tailor the Federal Communications Commission's Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure, 79 FR 30861 (May 29, 2014).

(b) *Exclusions.* The following categories of undertakings are excluded from review under this section:

(1) *Projects reviewed by other agencies.* Undertakings for which an agency other than the Commission is the lead Federal agency pursuant to 36 CFR 800.2(a)(2).

(2) *Projects subject to program alternatives.* Undertakings excluded from review under a program alternative established pursuant to 36 CFR 800.14, including those listed in paragraph (a)(2) of this section.

(3) *Replacement utility poles.* Construction of a replacement for an existing structure where all the following criteria are satisfied:

(i) The original structure—

(A) Is a pole that can hold utility, communications, or related transmission lines;

(B) Was not originally erected for the sole or primary purpose of supporting antennas that operate pursuant to the Commission's spectrum license or authorization; and

(C) Is not itself a historic property.

(ii) The replacement pole—

(A) Is located no more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole; *provided* that construction of the replacement pole in place of the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines. For purposes of this paragraph, ''ground disturbance'' means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils;

(B) Has a height that does not exceed the height of the original pole by more than 5 feet or 10 percent of the height of the original pole, whichever is greater; and

(C) Has an appearance consistent with the quality and appearance of the original pole.

(4) *Collocations on buildings and other non-tower structures.* The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup power) on buildings or other non-tower structures where the deployment meets the following conditions:

(i) There is an existing antenna on the building or structure;

(ii) One of the following criteria is met:

(A) *Non-Visible Antennas.* The new antenna is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna;

(B) *Visible Replacement Antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(*1*) It is a replacement for a pre-existing antenna,

(*2*) The new antenna will be located in the same vicinity as the pre-existing antenna,

(*3*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(*4*) The new antenna is not more than 3 feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(*5*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or

(C) *Other Visible Antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(*1*) It is located in the same vicinity as a pre-existing antenna,

(*2*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(*3*) The pre-existing antenna was not deployed pursuant to the exclusion in this paragraph,

(*4*) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(*5*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;

(iii) The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements;

(iv) The deployment of the new antenna involves no new ground disturbance; and

(v) The deployment would otherwise require the preparation of an Environmental Assessment under 1.1304(a)(4) solely because of the age of the structure.

NOTE 1 TO PARAGRAPH (b)(4): A non-visible new antenna is in the ''same vicinity'' as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface. A visible new antenna is in the ''same vicinity'' as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within ten feet of the centerpoint of the pre-existing antenna. A deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.

(c) *Responsibilities of applicants.* Applicants seeking Commission authorization for construction or modification of towers, collocation of antennas, or other undertakings shall take the steps mandated by, and comply with the requirements set forth in, Appendix C of this part, sections III–X, or any other applicable program alternative.

(d) *Definitions.* For purposes of this section, the following definitions apply:

Antenna means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna. For most services, an antenna will be mounted on or in, and is distinct from, a supporting structure such as a tower, structure or building. However, in the case of AM broadcast stations, the entire tower or group of towers constitutes the antenna for that station. For purposes of this section, the term antenna does not include unintentional radiators, mobile stations, or devices authorized under part 15 of this title.

Applicant means a Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.

Collocation means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

Tower means any structure built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, including the on-

site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower but not installed as part of an antenna as defined herein.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of the Commission, including those requiring a Commission permit, license or approval. Maintenance and servicing of towers, antennas, and associated equipment are not deemed to be undertakings subject to review under this section.

[82 FR 58758, Dec. 14, 2017]

Subpart J—Pole Attachment Complaint Procedures

SOURCE: 43 FR 36094, Aug. 15, 1978, unless otherwise noted.

§ 1.1401 Purpose.

The rules and regulations contained in subpart J of this part provide complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms, and conditions that are just and reasonable. They also provide complaint and enforcement procedures for incumbent local exchange carriers (as defined in 47 U.S.C. 251(h)) to ensure that the rates, terms, and conditions of their access to pole attachments are just and reasonable.

[83 FR 44838, Sept. 4, 2018]

§ 1.1402 Definitions.

(a) The term *utility* means any person that is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person that is cooperatively organized, or any person owned by the Federal Government or any State.

(b) The term *pole attachment* means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(c) With respect to poles, the term *usable space* means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the utility. With respect to conduit, the term *usable space* means capacity within a conduit system which is available, or which could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications or cable services, and which includes capacity occupied by the utility.

(d) The term *complaint* means a filing by a cable television system operator, a cable television system association, a utility, an association of utilities, a telecommunications carrier, or an association of telecommunications carriers alleging that it has been denied access to a utility pole, duct, conduit, or right-of-way in violation of this subpart and/or that a rate, term, or condition for a pole attachment is not just and reasonable. It also means a filing by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term *complainant* means a cable television system operator, a cable television system association, a utility, an association of utilities, a telecommunications carrier, an association of telecommunications carriers, an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers who files a complaint.

(f) The term *defendant* means a cable television system operator, a utility, or a telecommunications carrier against whom a complaint is filed.

(g) The term *State* means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(h) For purposes of this subpart, the term *telecommunications carrier* means any provider of telecommunications services, except that the term does not

include aggregators of telecommunications services (as defined in 47 U.S.C. 226) or incumbent local exchange carriers (as defined in 47 U.S.C. 251(h)).

(i) The term *conduit* means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

(j) The term *conduit* system means a collection of one or more conduits together with their supporting infrastructure.

(k) The term *duct* means a single enclosed raceway for conductors, cable and/or wire.

(l) With respect to poles, the term *unusable space* means the space on a utility pole below the usable space, including the amount required to set the depth of the pole.

(m) The term *attaching entity* includes cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities, governmental entities and other entities with a physical attachment to the pole, duct, conduit or right of way. It does not include governmental entities with only seasonal attachments to the pole.

(n) The term *inner-duct* means a ductlike raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

(o) The term *make-ready* means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(p) The term *complex make-ready* means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

(q) The term *simple make-ready* means make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

(r) The term *communications space* means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.

[43 FR 36094, Aug. 15, 1978, as amended at 52 FR 31770, Aug. 24, 1987; 61 FR 43024, Aug. 20, 1996; 61 FR 45618, Aug. 29, 1996; 63 FR 12024, Mar. 12, 1998; 65 FR 31281, May 17, 2000; 66 FR 34580, June 29, 2001; 76 FR 26638, May 9, 2011; 83 FR 44838, Sept. 4, 2018; 83 FR 46836, Sept. 14, 2018]

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

(a) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Notwithstanding this obligation, a utility may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.

(b) Requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

(c) A utility shall provide a cable television system or telecommunications carrier no less than 60 days written notice prior to:

(1) Removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of the cable television system operator's or telecommunications carrier's pole attachment agreement;

(2) Any increase in pole attachment rates; or

(3) Any modification of facilities by the utility other than make-ready noticed pursuant to §1.1411(e), routine maintenance, or modification in response to emergencies.

(d) A cable television system operator or telecommunications carrier may file a ''Petition for Temporary Stay'' of the action contained in a notice received pursuant to paragraph (c) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service or telecommunication service, a copy of the notice, and certification of service as required by §1.1404(b). The named may file an answer within 7 days of the date the Petition for Temporary Stay was filed. No further filings under this section will be considered unless requested or authorized by the Commission and no extensions of time will be granted unless justified pursuant to §1.46.

(e) Cable operators must notify pole owners upon offering telecommunications services.

[61 FR 45618, Aug. 29, 1996, as amended at 63 FR 12025, Mar. 12, 1998; 79 FR 73847, Dec. 12, 2014; 83 FR 44839, Sept. 4, 2018; 83 FR 46836, Sept. 14, 2018]

§1.1404 Pole attachment complaint proceedings.

(a) Pole attachment complaint proceedings shall be governed by the formal complaint rules in subpart E of this part, §§1.720–1.740, except as otherwise provided in this subpart J.

(b) The complaint shall be accompanied by a certification of service on the named defendant, and each of the Federal, State, and local governmental agencies that regulate any aspect of the services provided by the complainant or defendant.

(c) In a case where it is claimed that a rate, term, or condition is unjust or unreasonable, the complaint shall contain a statement that the State has not certified to the Commission that it regulates the rates, terms and conditions for pole attachments. The complaint shall include a statement that the utility is not owned by any railroad, any person who is cooperatively organized or any person owned by the Federal Government or any State.

(d) The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the cable television system operator or telecommunications carrier and the utility. If there is no present pole attachment agreement, the complaint shall contain:

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

(2) A statement that the cable television system operator or telecommunications carrier currently has attachments on the poles, ducts, conduits, or rights-of-way.

(e) The complaint shall state with specificity the pole attachment rate, term or condition which is claimed to be unjust or unreasonable and provide all data and information supporting such claim. Data and information supporting the complaint (including all information necessary for the Commission to apply the rate formulas in §1.1406 should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not just and reasonable.

(f) A utility must supply a cable television system operator or telecommunications carrier the information required in paragraph (e) of this section, as applicable, along with the supporting pages from its ARMIS, FERC Form 1, or other report to a regulatory body, and calculations made in connection with these figures, within 30 days of the request by the cable television system operator or telecommunications carrier.

(g) If any of the information and data required in paragraphs (e) and (f) of this section is not provided to the cable television system operator or telecommunications carrier by the utility

upon reasonable request, the cable television system operator or telecommunications carrier shall include a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests. No complaint filed by a cable television system operator or telecommunications carrier shall be dismissed where the utility has failed to provide the information required under paragraphs (e) and (f) after such reasonable request.

[83 FR 44839, Sept. 4, 2018]

§ 1.1405 Dismissal of pole attachment complaints for lack of jurisdiction.

(a) The complaint shall be dismissed for lack of jurisdiction in any case where a suitable certificate has been filed by a State pursuant to paragraph (b) of this section. Such certificate shall be conclusive proof of lack of jurisdiction of this Commission. A complaint alleging a denial of access shall be dismissed for lack of jurisdiction in any case where the defendant or a State offers proof that the State is regulating such access matters. Such proof should include a citation to state laws and regulations governing access and establishing a procedure for resolving access complaints in a state forum. A complaint against a utility shall also be dismissed if the utility does not use or control poles, ducts, or conduits used or designated, in whole or in part, for wire communication or if the utility does not meet the criteria of § 1.1402(a).

(b) It will be rebuttably presumed that the state is not regulating pole attachments if the Commission does not receive certification from a state that:

(1) It regulates rates, terms and conditions for pole attachments;

(2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the consumers of the services offered via such attachments, as well as the interests of the consumers of the utility services; and

(3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state).

(c) Upon receipt of such certification, the Commission shall give public notice. In addition, the Commission shall compile and publish from time to time, a listing of states which have provided certification.

(d) Upon receipt of such certification, the Commission shall forward any pending case thereby affected to the state regulatory authority, shall so notify the parties involved and shall give public notice thereof.

(e) Certification shall be by order of the state regulatory body or by a person having lawful delegated authority under provisions of state law to submit such certification. Said person shall provide in writing a statement that he or she has such authority and shall cite the law, regulation or other instrument conferring such authority.

(f) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:

(1) Within 180 days after the complaint is filed with the state, or

(2) Within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

[83 FR 44839, Sept. 4, 2018]

§ 1.1406 Commission consideration of the complaint.

(a) The complainant shall have the burden of establishing a *prima facie* case that the rate, term, or condition is not just and reasonable or that the denial of access violates 47 U.S.C. 224(f). If, however, a utility argues that the proposed rate is lower than its incremental costs, the utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate. In a case involving a denial of access, the utility shall have the burden of proving that the denial was lawful, once a *prima facie* case is established by the complainant.

(b) The Commission shall determine whether the rate, term or condition complained of is just and reasonable.

For the purposes of this paragraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way. The Commission shall exclude from actual capital costs those reimbursements received by the utility from cable operators and telecommunications carriers for non-recurring costs.

(c) The Commission shall deny the complaint if it determines that the complainant has not established a *prima facie* case, or that the rate, term or condition is just and reasonable, or that the denial of access was lawful.

(d) The Commission will apply the following formulas for determining a maximum just and reasonable rate:

(1) The following formula shall apply to attachments to poles by cable operators providing cable services. This formula shall also apply to attachments to poles by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Where Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}}$$

(2) With respect to attachments to poles by any telecommunications carrier or cable operator providing telecommunications services, the maximum just and reasonable rate shall be the higher of the rate yielded by paragraphs (d)(2)(i) or (d)(2)(ii) of this section.

(i) The following formula applies to the extent that it yields a rate higher than that yielded by the applicable formula in paragraph (d)(2)(ii) of this section:

Rate = Space Factor × Cost

Where Cost

in Service Areas where the number of Attaching Entities is 5 = 0.66 × (Net Cost of a Bare Pole × Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 4 = 0.56 × (Net Cost of a Bare Pole × Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 3 = 0.44 × (Net Cost of a Bare Pole × Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 2 = 0.31 × (Net Cost of a Bare Pole × Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is not a whole number = N × (Net Cost of a Bare Pole × Carrying Charge Rate), where N is interpolated from the cost allocator associated with the nearest whole numbers above and below the number of Attaching Entities.

$$\text{Where Space Factor} = \left[\frac{\left(\begin{array}{c}\text{Space}\\ \text{Occupied}\end{array}\right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right]$$

(ii) The following formula applies to the extent that it yields a rate higher than that yielded by the applicable formula in paragraph (d)(2)(i) of this section:

$$\text{Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \left[\begin{array}{c}\text{Maintenance and Administrative}\\ \text{Carrying Charge Rate}\end{array}\right]$$

$$\text{Where Space Factor} = \left[\frac{\left(\begin{array}{c}\text{Space}\\ \text{Occupied}\end{array}\right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right]$$

(3) The following formula shall apply to attachments to conduit by cable operators and telecommunications carriers:

$$\begin{array}{c}\textit{Maximum}\\ \textit{Rate}\text{ per}\\ \textit{Linear}\text{ ft./m.}\end{array} = \underbrace{\left[\frac{1}{\textit{Number}\text{ of Ducts}} \times \frac{1\text{ Duct}}{\textit{No.}\text{ of Inner Ducts}}\right]}_{\text{(Percentage of Conduit Capacity)}} \times \underbrace{\left[\begin{array}{c}\textit{No.}\text{ of}\\ \text{Ducts}\end{array} \times \frac{\textit{Net}\text{ Conduit Investment}}{\text{System Duct Length (ft./m.)}}\right]}_{\text{(Net Linear Cost of a Conduit)}} \times \begin{array}{c}\text{Carrying}\\ \text{Charge}\\ \text{Rate}\end{array}$$

simplified as:

$$\begin{array}{c}\textit{Maximum Rate}\\ \text{Per }\textit{Linear}\text{ ft./m.}\end{array} = \frac{1\text{ Duct}}{\textit{No.}\text{ of Inner Ducts}} \times \frac{\textit{Net}\text{ Conduit Investment}}{\text{System Duct Length (ft./m.)}} \times \begin{array}{c}\text{Carrying}\\ \text{Charge}\\ \text{Rate}\end{array}$$

(4) If no inner-duct is installed the fraction, ''1 Duct divided by the No. of Inner-Ducts'' is presumed to be ½.

(e) A price cap company, or a rate-of-return carrier electing to provide service pursuant to § 61.50 of this chapter, that opts-out of part 32 of this chapter may calculate attachment rates for its poles, ducts, conduits, and rights of way using either part 32 accounting data or GAAP accounting data. A company using GAAP accounting data to compute rates to attach to its poles, ducts, conduits, and rights of way in any of the first twelve years after opting-out must adjust (increase or decrease) its annually computed GAAP-based rates by an Implementation Rate Difference for each of the remaining

years in the period. The Implementation Rate Difference means the difference between attachment rates calculated by the carrier under part 32 and under GAAP as of the last full year preceding the carrier's initial opting-out of part 32 USOA accounting requirements.

[83 FR 44840, Sept. 4, 2018, as amended at 83 FR 67121, Dec. 28, 2018]

§ 1.1407 Remedies.

(a) If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may:

(1) Terminate the unjust and/or unreasonable rate, term, or condition;

(2) Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the Commission; and/or

(3) Order a refund, or payment, if appropriate. The refund or payment will normally be the difference between the amount paid under the unjust and/or unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission, plus interest, consistent with the applicable statute of limitations.

(b) If the Commission determines that access to a pole, duct, conduit, or right-of-way has been unlawfully denied or delayed, it may order that access be permitted within a specified time frame and in accordance with specified rates, terms, and conditions.

[83 FR 44841, Sept. 4, 2018]

§ 1.1408 Imputation of rates; modification costs.

(a) A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(b) The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. A party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification as provided in subpart J of this part, it adds to or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party. If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.

[61 FR 43025, Aug. 20, 1996; 61 FR 45619, Aug. 29, 1996. Redesignated at 83 FR 44841, Sept. 4, 2018]

§ 1.1409 Allocation of Unusable Space Costs.

(a) With respect to the formula referenced in § 1.1406(d)(2), a utility shall apportion the cost of providing unusable space on a pole so that such apportionment equals two-thirds of the costs of providing unusable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(b) All attaching entities attached to the pole shall be counted for purposes of apportioning the cost of unusable space.

(c) Utilities may use the following rebuttable presumptive averages when calculating the number of attaching entities with respect to the formula referenced in § 1.1406(d)(2). For non-urbanized service areas (under 50,000 population), a presumptive average number of attaching entities of three. For urbanized service areas (50,000 or higher population), a presumptive average number of attaching entities of five. If any part of the utility's service area within the state has a designation of

urbanized (50,000 or higher population) by the Bureau of Census, United States Department of Commerce, then all of that service area shall be designated as urbanized for purposes of determining the presumptive average number of attaching entities.

(d) A utility may establish its own presumptive average number of attaching entities for its urbanized and non-urbanized service area as follows:

(1) Each utility shall, upon request, provide all attaching entities and all entities seeking access the methodology and information upon which the utilities presumptive average number of attachers is based.

(2) Each utility is required to exercise good faith in establishing and updating its presumptive average number of attachers.

(3) The presumptive average number of attachers may be challenged by an attaching entity by submitting information demonstrating why the utility's presumptive average is incorrect. The attaching entity should also submit what it believes should be the presumptive average and the methodology used. Where a complete inspection is impractical, a statistically sound survey may be submitted.

(4) Upon successful challenge of the existing presumptive average number of attachers, the resulting data determined shall be used by the utility as the presumptive number of attachers within the rate formula.

[63 FR 12026, Mar. 12, 1998, as amended at 66 FR 34581, June 29, 2001. Redesignated and amended at 83 FR 44841, Sept. 4, 2018]

§ 1.1410 Use of presumptions in calculating the space factor.

With respect to the formulas referenced in § 1.1406(d)(1) and (d)(2), the space occupied by an attachment is presumed to be one foot. The amount of usable space is presumed to be 13.5 feet. The amount of unusable space is presumed to be 24 feet. The pole height is presumed to be 37.5 feet. These presumptions may be rebutted by either party.

[83 FR 44841, Sept. 4, 2018]

§ 1.1411 Timeline for access to utility poles.

(a) *Definitions.*

(1) The term ''attachment'' means any attachment by a cable television system or provider of telecommunications service to a pole owned or controlled by a utility.

(2) The term ''new attacher'' means a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility.

(3) The term ''existing attacher'' means any entity with equipment on a utility pole.

(b) All time limits in this subsection are to be calculated according to § 1.4.

(c) *Application review and survey*—(1) *Application completeness.* A utility shall review a new attacher's attachment application for completeness before reviewing the application on its merits. A new attacher's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.

(i) A utility shall determine within 10 business days after receipt of a new attacher's attachment application whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the utility timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

(ii) Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons

identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(2) *Application review on the merits.* A utility shall respond to the new attacher either by granting access or, consistent with §1.1403(b), denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section). A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

(3) *Survey.* (i) A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (g) of this section).

(ii) A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than 3 business days of any field inspection as part of the survey and shall provide the date, time, and location of the survey, and name of the contractor performing the survey.

(iii) Where a new attacher has conducted a survey pursuant to paragraph (j)(3) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to paragraph (j)(3) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (c)(3)(i) of this section. A utility relying on a survey conducted pursuant to paragraph (j)(3) of this section to satisfy all of its obligations under paragraph (c)(3)(i) of this section shall have 15 days to make such a notification to affected attachers rather than a 45 day survey period.

(d) *Estimate.* Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of providing the response required by paragraph (c) of this section, or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility present charges on a per-job basis rather than present a pole-by-pole estimate for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

(1) A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented.

(2) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn.

(3) Final invoice: After the utility completes make-ready, if the final cost of the work differs from the estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new attacher's attachment. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole invoice for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

(4) A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment

were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

(e) *Make-ready*. Upon receipt of payment specified in paragraph (d)(2) of this section, a utility shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.

(1) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of larger orders as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(1)(ii) in this section, the new attacher may complete the make-ready specified pursuant to paragraph (e)(1)(i) in this section.

(v) State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(2) For attachments above the communications space, the notice shall:

(i) Specify where and what make-ready will be performed.

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in paragraph (g) of this section).

(iii) State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

(iv) State that the utility may assert its right to 15 additional days to complete make-ready.

(v) State that if make-ready is not completed by the completion date set by the utility in paragraph (e)(2)(ii) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to paragraph (e)(1)(i) of this section.

(vi) State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(3) Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (e)(1)(ii) of this section for communications space attachments or paragraph (e)(2)(ii) of this section for attachments above the communications space.

(f) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (e)(1)(ii) of this section or its make-ready above the communications space by the same dates for existing attachers in paragraph (e)(2)(ii) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(g) For the purposes of compliance with the time periods in this section:

(1) A utility shall apply the timeline described in paragraphs (c) through (e) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

(2) A utility may add 15 days to the survey period described in paragraph (c) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(3) A utility may add 45 days to the make-ready periods described in paragraph (e) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(4) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

(5) A utility may treat multiple requests from a single new attacher as

one request when the requests are filed within 30 days of one another.

(h) *Deviation from the time limits specified in this section.* (1) A utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.

(2) A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.

(3) An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (e)(1) of this section is sent by the utility (or up to 105 days in the case of larger orders described in paragraph (g) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

(i) *Self-help remedy*—(1) *Surveys.* If a utility fails to complete a survey as specified in paragraph (c)(3)(i) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in § 1.1412, hire a contractor to complete a survey.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

(ii) A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(2) *Make-ready.* If make-ready is not complete by the date specified in paragraph (e) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in § 1.1412, hire a contractor to complete the make-ready.

(i) A new attacher shall permit the affected utility and existing attachers to be present for any make-ready. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 5 days of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:

(A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(B) Require the new attacher to fix the damage at its expense immediately

following notice from the utility or existing attacher.

(iii) A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

(3) *Pole replacements.* Self-help shall not be available for pole replacements.

(j) One-*touch make-ready option.* For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (c) through (f) and (i) of this section.

(1) *Attachment application.* (i) A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.

(ii) The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.

(A) A utility has 10 business days after receipt of a new attacher's attachment application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.

(B) If the utility timely notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The applicant may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

(2) *Application review on the merits.* The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of larger orders as described in paragraph (g) of this section).

(i) If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

(ii) Within the 15-day application review period (or within 30 days in the case of larger orders as described in

paragraph (g) of this section), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

(3) *Surveys*. The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in §1.1412(b).

(i) The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(ii) [Reserved]

(4) *Make-ready*. If the new attacher's attachment application is approved and if it has provided 15 days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a contractor in the manner specified for simple make-ready in §1.1412(b).

(i) The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

(ii) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:

(A) Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

(B) Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

(iii) In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready shall then be governed by paragraphs (d) through (i) of this section and the utility shall provide the notice required by paragraph (e) of this section as soon as reasonably practicable.

(5) *Post-make-ready timeline*. A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

[76 FR 26640, May 9, 2011. Redesignated and amended at 83 FR 44841, Sept. 4, 2018; 83 FR 46836, Sept. 14, 2018]

§ 1.1412 Contractors for survey and make-ready.

(a) *Contractors for self-help complex and above the communications space make-ready*. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on its poles. The new attacher must use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (c)(1) through (5) of this section and the utility may not unreasonably withhold its consent.

(b) *Contractors for simple work*. A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and simple make-ready. If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (c)(1) through (5) of this section and the utility may not unreasonably withhold its consent.

(1) If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (c) of this section. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in paragraph (c) of this section when providing notices required by § 1.1411(i)(1)(ii), (i)(2)(i), (j)(3)(i), and (j)(4).

(2) The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in § 1.1411(i)(1)(ii), (i)(2)(i), (j)(3)(i), and (j)(4) and in its objection must identify at least one available qualified contractor.

(c) *Contractor minimum qualification requirements*. Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to paragraph (b)(1) of this section, meet the following minimum requirements:

(1) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines;

(2) The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;

(3) The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;

(4) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and

(5) The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.

(d) The consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

[76 FR 26640, May 9, 2011. Redesignated and amended at 83 FR 44842, Sept. 4, 2018; 83 FR 46839, Sept. 14, 2018]

§ 1.1413 Complaints by incumbent local exchange carriers.

(a) A complaint by an incumbent local exchange carrier (as defined in 47 U.S.C. 251(h)) or an association of incumbent local exchange carriers alleging that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a local exchange carrier or that a utility's rate, term, or condition for a pole attachment is not just and reasonable shall follow the same complaint procedures specified for other pole attachment complaints in this part.

(b) In complaint proceedings challenging utility pole attachment rates, terms, and conditions for pole attachment contracts entered into or renewed after the effective date of this section, there is a presumption that an incumbent local exchange carrier (or an association of incumbent local exchange carriers) is similarly situated to an attacher that is a telecommunications carrier (as defined in 47 U.S.C. 251(a)(5)) or a cable television system providing telecommunications services for purposes of obtaining comparable rates, terms, or conditions. In such complaint proceedings challenging pole attachment rates, there is a presumption that incumbent local exchange carriers (or an association of incumbent local exchange carriers) may be charged no higher than the rate determined in accordance with § 1.1406(d)(2). A utility can rebut either or both of the two presumptions in this paragraph (b) with clear and convincing evidence that the incumbent local exchange carrier receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent local exchange carrier over other telecommunications carriers or cable television systems providing telecommunications services on the same poles.

[83 FR 46840, Sept. 14, 2018, as amended at 85 FR 64061, Oct. 9, 2020]

§ 1.1414 Review period for pole attachment complaints.

(a) *Pole access complaints.* Except in extraordinary circumstances, final action on a complaint where a cable television system operator or provider of telecommunications service claims that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a utility should be expected no later than 180 days from the date the complaint is filed with the Commission. The Enforcement Bureau shall have the discretion to pause the 180-day review period in situations where actions outside the Enforcement Bureau's control are responsible for delaying review of a pole access complaint.

(b) *Other pole attachment complaints.* All other pole attachment complaints shall be governed by the review period in § 1.740.

[83 FR 44842, Sept. 4, 2018]

§ 1.1415 Overlashing.

(a) *Prior approval.* A utility shall not require prior approval for:

(1) An existing attacher that overlashes its existing wires on a pole; or

(2) For third party overlashing of an existing attachment that is conducted with the permission of an existing attacher.

(b) *Preexisting violations.* A utility may not prevent an attacher from overlashing because another existing attacher has not fixed a preexisting violation. A utility may not require an existing attacher that overlashes its existing wires on a pole to fix preexisting violations caused by another existing attacher.

(c) *Advance notice.* A utility may require no more than 15 days' advance notice of planned overlashing. If a utility requires advance notice for overlashing, then the utility must provide existing attachers with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attacher. If after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, it must provide specific documentation of the issue to the party seeking to overlash within the 15 day advance notice period and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. A utility may not charge a fee to the party seeking to overlash for the

utility's review of the proposed overlash.

(d) *Overlashers' responsibility*. A party that engages in overlashing is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party is responsible at its expense for any necessary repairs.

(e) *Post-overlashing review*. An overlashing party shall notify the affected utility within 15 days of completion of the overlash on a particular pole. The notice shall provide the affected utility at least 90 days from receipt in which to inspect the overlash. The utility has 14 days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations. The utility may either complete any necessary remedial work and bill the overlashing party for the reasonable costs related to fixing the damage or code violations or require the overlashing party to fix the damage or code violations at its expense within 14 days following notice from the utility.

[83 FR 46840, Sept. 14, 2018]

Subpart K—Implementation of the Equal Access to Justice Act (EAJA) in Agency Proceedings

AUTHORITY: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 3786, Jan. 27, 1982, unless otherwise noted.

GENERAL PROVISIONS

§ 1.1501 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called *the EAJA* in this subpart), provides for the award of attorney's fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called *adversary adjudications*) before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust, or when the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39898, July 31, 1996]

§ 1.1502 When the EAJA applies.

The EAJA applies to any adversary adjudication pending or commenced before the Commission on or after August 5, 1985. The provisions of § 1.1505(b) apply to any adversary adjudications commenced on or after March 29, 1996.

[61 FR 39898, July 31, 1996]

§ 1.1503 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Any proceeding in which this Agency may fix a lawful present or future rate is not covered by the EAJA. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise ''adversary adjudications''.

(b) The Commission may designate a proceeding as an adversary adjudication for purposes of the EAJA by so

stating in an order initiating the proceeding or designating the matter for hearing. The Commission's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the EAJA and matters specifically excluded from coverage, any awards made will include only fees and expenses related to covered issues.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987]

§ 1.1504 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the EAJA, the applicant must be a party, as defined in 5 U.S.C. 551(3), to the adversary adjudication for which it seeks an award. The applicant must show that it meets all conditions of eligibility set out in this paragraph and in paragraph (b) of this section.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable association as defined in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees;

(6) For purposes of § 1.1505(b), a small entity as defined in 5 U.S.C. 601.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The number of employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the presiding officer, as defined in 47 CFR 1.241, determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the presiding officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39898, July 31, 1996; 85 FR 63183, Oct. 6, 2020]

§ 1.1505 Standards for awards.

(a) A prevailing party may receive an award for fees and expenses incurred in connection either with an adversary adjudication, or with a significant and discrete substantive portion of an adversary adjudication in which the party has prevailed over the position of the Commission.

(1) The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure

to act by the agency upon which the adversary adjudication is based.

(2) An award will be reduced or denied if the Commission's position was substantially justified in law and fact, if special circumstances make an award unjust, or if the prevailing party unduly or unreasonably protracted the adversary adjudication.

(b) If, in an adversary adjudication arising from a Commission action to enforce a party's compliance with a statutory or regulatory requirement, the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with that decision, under the facts and circumstances of the case, the party shall be awarded the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The ''demand'' of the Commission means the express demand which led to the adversary adjudication, but it does not include a recitation by the Commission of the maximum statutory penalty in the administrative complaint, or elsewhere when accompanied by an express demand for a lesser amount.

(c) The burden of proof that an award should not be made is on the appropriate Bureau (see §1.21) whose representative shall be called ''Bureau counsel'' in this subpart K.

[61 FR 39899, July 31, 1996]

§ 1.1506 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00, or for adversary adjudications commenced on or after March 29, 1996, $125.00, per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may also include the reasonable expenses of the attorney; agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges its clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the presiding officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the service provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

(e) Fees may be awarded only for work performed after designation of a proceeding or after issuance of a show cause order.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996; 85 FR 63183, Oct. 6, 2020]

§ 1.1507 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than $125.00 per hour in some or all of the types of proceedings covered by this part. The Commission will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees, in accordance with subpart C of this chapter. The petition should

identify the rate the petitioner believes this agency should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. This agency will respond to the petition by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

§ 1.1508 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency. Counsel for that agency shall be treated as Bureau counsel for the purpose of this subpart.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996]

INFORMATION REQUIRED FROM APPLICANTS

§ 1.1511 Contents of application.

(a) An application for an award of fees and expenses under EAJA shall dentify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified; or

(2) Show that the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application shall also include a declaration that the applicant is a small entity as defined in 5 U.S.C. 601 or a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit the statement concerning its net worth if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39899, July 31, 1996]

§ 1.1512 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 1.1504(f) of this part) at the time the proceeding was designated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The presiding officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant

that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled ''Confidential Financial Information'', accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1) through (9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on Bureau counsel, but need not be served on any other party to the proceeding. If the presiding officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act, §§ 0.441 through 0.466 of this chapter.

[47 FR 3786, Jan. 27, 1982, as amended at 85 FR 63184, Oct. 6, 2020]

§ 1.1513 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The presiding officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996; 85 FR 63184, Oct. 6, 2020]

§ 1.1514 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, or when the demand of the Commission is substantially in excess of the decision in the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, *final disposition* means the later of

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by a presiding officer (other than the Commission) becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Commission's order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such petition could have been filed;

(4) Issuance of a final order by the Commission or any other final resolution of a proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for reconsideration, or to a petition for judicial review; or

(5) Completion of judicial action on the underlying controversy and any subsequent Commission action pursuant to judicial mandate.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996; 85 FR 63184, Oct. 6, 2020]

PROCEDURES FOR CONSIDERING APPLICATIONS

§ 1.1521 Filing and service of documents.

Any application for an award or other pleading relating to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 1.1512(b) for confidential financial information.

§ 1.1522 Answer to application.

(a) Within 30 days after service of an application Bureau counsel may file an answer to the application. Unless Bureau counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award request.

(b) If Bureau counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by Bureau counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of Bureau counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, Bureau counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.1526.

[47 FR 3786, Jan. 27, 1982, as amended at 85 FR 63184, Oct. 6, 2020]

§ 1.1523 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.1526.

§ 1.1524 Comments by other parties.

Any party to a proceeding other than the applicant and Bureau counsel may file comments on an application within 30 days after it is served or an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39899, July 31, 1996; 85 FR 63184, Oct. 6, 2020]

§ 1.1525 Settlement.

The applicant and Bureau counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Bureau counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If a presiding officer (other than the Commission) approves the proposed settlement, it shall be forwarded to the Commission for final determination. If the Commission is the presiding officer, it shall approve or deny the proposed settlement.

[47 FR 3786, Jan. 27, 1982, as amended at 85 FR 63184, Oct. 6, 2020]

§ 1.1526 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Bureau counsel, or on her own initiative, the presiding officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than excessive demand or substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency embodied an excessive demand or was

substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39899, July 31, 1996; 85 FR 63184, Oct. 6, 2020]

§ 1.1527 Initial decision.

A presiding officer (other than the Commission) shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. The decision shall include written findings and conclusions regarding the applicant's eligibility and whether the applicant was a prevailing party or whether the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the adversary adjudication, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position substantially justified, whether the applicant unduly protracted the proceedings, committed a willful violation of law, or otherwise acted in bad faith, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made. When the Commission is the presiding officer, the Commission may, but is not required to, issue an initial or recommended decision.

[61 FR 39900, July 31, 1996, as amended at 85 FR 63184, Oct. 6, 2020]

§ 1.1528 Commission review.

Either the applicant or Bureau counsel may seek Commission review of the initial decision on the application, or the Commission may decide to review the decision on its own initiative, in accordance with §§ 1.276 through 1.282 of this chapter. Except as provided in § 1.1525, if neither the applicant nor Bureau counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 50 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the presiding officer (other than the Commission) for further proceedings.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39900, July 31, 1996; 85 FR 63184, Oct. 6, 2020]

§ 1.1529 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1.1530 Payment of award.

An applicant seeking payment of an award from the Commission shall submit to the General Counsel a copy of the Commission's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts, or a copy of the court's order directing payment. The Commission will pay the amount awarded to the applicant unless judicial review of the award or the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Subpart L—Random Selection Procedures for Mass Media Services

AUTHORITY: 47 U.S.C. 309(i).

SOURCE: 48 FR 27202, June 13, 1983, unless otherwise noted.

GENERAL PROCEDURES

§ 1.1601 Scope.

The provisions of this subpart, and the provisions referenced herein, shall

apply to applications for initial licenses or construction permits or for major changes in the facilities of authorized stations in the following services:

(a)–(b) [Reserved]

[48 FR 27202, June 13, 1983, as amended at 63 FR 48622, Sept. 11, 1998]

§ 1.1602 Designation for random selection.

Applications in the services specified in § 1.1601 shall be tendered, accepted or dismissed, filed, publicly noted and subject to random selection and hearing in accordance with any relevant rules. Competing applications for an initial license or construction permit shall be designated for random selection and hearing in accordance with the procedures set forth in §§ 1.1603 through 1.1623 and § 73.3572 of this chapter.

§ 1.1603 Conduct of random selection.

The random selection probabilities will be calculated in accordance with the formula set out in rules §§ 1.1621 through 1.1623.

[48 FR 27202, June 13, 1983, as amended at 48 FR 43330, Sept. 23, 1983]

§ 1.1604 Post-selection hearings.

(a) Following the random selection, the Commission shall announce the ''tentative selectee'' and, where permitted by § 73.3584 invite Petitions to Deny its application.

(b) If, after such hearing proceeding as may be necessary, the Commission determines that the ''tentative selectee'' has met the requirements of § 73.3591(a) it will make the appropriate grant. If the Commission is unable to make such a determination, it shall order that another random selection be conducted from among the remaining mutually exclusive applicants, in accordance with the provisions of this subpart.

(c) If, on the basis of the papers before it, the Commission determines that a substantial and material question of fact exists, it shall designate that question for hearing. Hearing proceedings shall be conducted by a presiding officer. *See* § 1.241.

[48 FR 27202, June 13, 1983, as amended at 63 FR 48622, Sept. 11, 1998; 85 FR 63184, Oct. 6, 2020]

§ 1.1621 Definitions.

(a) *Medium of mass communications* means:

(1) A daily newspaper;

(2) A cable television system; and

(3) A license or construction permit for

(i) A television station, including low power TV or TV translator,

(ii) A standard (AM) radio station,

(iii) An FM radio station,

(iv) A direct broadcast satellite transponder under the editorial control of the licensee, and

(v) A Multipoint Distribution Service station.

(b) *Minority group* means:

(1) Blacks,

(2) Hispanics

(3) American Indians,

(4) Alaska Natives,

(5) Asians, and

(6) Pacific Islanders.

(c) *Owner* means the applicant and any individual, partnership, trust, unincorporated association, or corporation which:

(1) If the applicant is a proprietorship, is the proprietor,

(2) If the applicant is a partnership, holds any partnership interest,

(3) If the applicant is a trust, is the beneficiary thereof,

(4) If the applicant is an unincorporated association or non-stock corporation, is a member, or, in the case of a nonmembership association or corporation, a director,

(5) If the applicant is a stock corporation, is the beneficial owner of voting shares.

NOTE 1: For purposes of applying the diversity preference to such entities only the other ownership interests of those with a 1% or more beneficial interest in the entity will be cognizable.

NOTE 2: For the purposes of this section, a daily newspaper is one which is published four or more days per week, which is in the English language, and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

NOTE 3: For the purposes of applying the diversity preference, the ownership interests of the spouse of an applicant's principal will not presumptively be attributed to the applicant.

[48 FR 27202, June 13, 1983, as amended at 50 FR 5992, Feb. 13, 1985]

§ 1.1622 Preferences.

(a) Any applicant desiring a perference in the random selection shall so indicate as part of its application. Such an applicant shall list any owner who owns all or part of a medium of mass communications or who is a member of a minority group, together with a precise identification of the ownership interest held in such medium of mass communications or name of the minority group, respectively. Such an applicant shall also state whether more than 50% of the ownership interests in it are held by members of minority groups and the number of media of mass communications more than 50% of whose ownership interests are held by the applicant and/or its owners.

(b) Preference factors as incorporated in the percentage calculations in § 1.1623, shall be granted as follows:

(1) Applicants, more than 50% of whose ownership interests are held by members of minority groups—2:1.

(2) Applicants whose owners in the aggregate hold more than 50% of the ownership interests in no other media of mass communications—2:1.

(3) Applicants whose owners in the aggregate hold more than 50% of the ownership interest in one, two or three other media of mass communications—1.5:1.

(c) Applicants may receive preferences pursuant to § 1.1622(b)(1) and either § 1.1622 (b)(2) or (b)(3).

(d) Preferences will be determined on the basis of ownership interests as of the date of release of the latest Public Notice announcing the acceptance of the last-filed mutually exclusive application.

(e) No preferences pursuant to § 1.1622 (b)(2) or (b)(3) shall be granted to any LPTV or MDS applicant whose owners, when aggregated, have an ownership interest of more than 50 percent in the following media of mass communications, if the service areas of those media as described herein wholly encompass or are encompassed by the protected predicted contour, computed in accordance with § 74.707(a), of the low power TV or TV translator station for which the license or permit is sought, or computed in accordance with § 21.902(d), of the MDS station for which the license or permit is sought.

(1) AM broadcast station—predicted or measured 2 mV/m groundwave contour, computed in accordance with § 73.183 or § 73.186;

(2) FM broadcast station—predicted 1 mV/m contour, computed in accordance with § 73.313;

(3) TV broadcast station—Grade A contour, computed in accordance with § 73.684;

(4) Low power TV or TV translator station—protected predicted contour, computed in accordance with § 74.707(a);

(5) Cable television system franchise area, nor will the diversity preference be available to applicants whose proposed transmitter site is located within the franchise area of a cable system in which its owners, in the aggregate, have an ownership interest of more than 50 percent.

(6) Daily newspaper community of publication, nor will the diversity preference be available to applicants whose proposed transmitter site is located within the community of publication of a daily newspaper in which its owners, in the aggregate, have an ownership interest of more than 50 percent.

(7) Multipoint Distribution Service—station service area, computed in accordance with § 21.902(d).

[48 FR 27202, June 13, 1983, as amended at 50 FR 5992, Feb. 13, 1985; 50 FR 11161, Mar. 20, 1985]

§ 1.1623 Probability calculation.

(a) All calculations shall be computed to no less than three significant digits. Probabilities will be truncated to the number of significant digits used in a particular lottery.

(b) Divide the total number of applicants into 1.00 to determine pre-preference probabilities.

(c) Multiply each applicant's pre-preference probability by the applicable preference from § 1.1622 (b)(2) or (b)(3).

(d) Divide each applicant's probability pursuant to paragraph (c) of this section by the sum of such probabilities to determine intermediate probabilities.

(e) Add the intermediate probabilities of all applicants who received a preference pursuant to §1.1622 (b)(2) or (b)(3).

(f)(1) If the sum pursuant to paragraph (e) of this section is .40 or greater, proceed to paragraph (g) of this section.

(2) If the sum pursuant to paragraph (e) of this section is less than .40, then multiply each such intermediate probability by the ratio of .40 to such sum. Divide .60 by the number of applicants who did not receive a preference pursuant to §1.1622 (b)(2) or (b)(3) to determine their new intermediate probabilities.

(g) Multiply each applicant's probability pursuant to paragraph (f) of this section by the applicable preference ratio from §1.1622(b)(1).

(h) Divide each applicant's probability pursuant to paragraph (g) of this section by the sum of such probabilities to determine the final selection percentage.

Subpart M—Cable Operations and Licensing System (COALS)

SOURCE: 68 FR 27001, May 19, 2003, unless otherwise noted.

§ 1.1701 Purpose.

To provide electronic filing of applications, notifications, registration statements, reports, and related documents in the Multichannel Video and Cable Television Services and the Cable Television Relay Services.

§ 1.1702 Scope.

This subpart applies to filings required by §§76.403, 76.1610, 76.1801, 76.1803, & 76.1804, and 78.11 through 78.36 of this chapter.

§ 1.1703 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Application*. A request on Form 327 for a station license as defined in Section 3(b) of the Communications Act, completed in accordance with §78.15 and signed in accordance with §78.16 of this chapter, or a similar request to amend a pending application or to modify or renew an authorization. The term also encompasses requests to assign rights granted by the authorization or to transfer control of entities holding authorizations.

(b) *Authorization*. A written instrument issued by the FCC conveying authority to operate, for a specified period, a station in the Cable Television Relay Service. In addition, this term includes authority conveyed by operation of rule upon filing notification of aeronautical frequency usage by MVPDs or registration statements by cable operators.

(c) *Cable Operations And Licensing System (COALS)*. The consolidated database, application filing system, and processing system for Multichannel Video and Cable Television Services (MVCTS) and the Cable Television Relay Service (CARS). COALS supports electronic filing of all applications, notifications, registrations, reports, and related documents by applicants and licensees in the MVCTS and CARS, and provides public access to licensing information.

(d) *Cable Television Relay Service (CARS)*. All services authorized under part 78 of this title.

(e) *Filings*. Any application, notification, registration statement, or report in plain text, or, when as prescribed, on FCC Forms, 320, 321, 322, 324, or 327, whether filed in paper form or electronically.

(f) *Multichannel Video and Cable Television Services (MVCTS)*. All services authorized or operated in accordance with part 76 of this title.

(g) *Receipt date*. The date an electronic or paper application is received at the appropriate location at the Commission or the lock box bank. Major amendments to pending applications as defined in §78.109 of this chapter, will result in the assignment of a new receipt date.

(h) *Signed*. For manually filed applications only, an original hand-written

signature. For electronically filed applications only, an electronic signature. An electronic signature shall consist of the name of the applicant transmitted electronically via COALS and entered on the filing as a signature.

[68 FR 27001, May 19, 2003, as amended at 83 FR 61335, Nov. 29, 2018]

§ 1.1704 Station files.

Applications, notifications, correspondence, electronic filings and other material, and copies of authorizations, comprising technical, legal, and administrative data relating to each system in the Multichannel Video and Cable Television Services (MVCTS) and the Cable Television Relay Service (CARS) are maintained by the Commission in COALS and the Public Reference Room. These files constitute the official records for these stations and supersede any other records, database or lists from the Commission or other sources.

§ 1.1705 Forms; electronic and manual filing.

(a) *Application forms*. Operators in the Multichannel Video and Cable Television Services (MVCTS) and applicants and licensees the Cable Television Relay Service (CARS) shall use the following forms and associated schedules:

(1) *FCC Form 320, Basic Signal Leakage Performance Report*. FCC Form 320 is used by MVPDs to report compliance with the basic signal leakage performance criteria.

(2) *FCC Form 321, Aeronautical Frequency Notification*. FCC Form 321 is used by MVPDs to notify the Commission prior to operating channels in the aeronautical frequency bands.

(3) *FCC Form 322, Cable Community Registration*. FCC Form 322 is used by cable system operators to commence operation for each community unit.

(4) *FCC Form 324, Operator, Address, and Operational Information Changes*. FCC Form 324 is used by cable operators to notify the Commission of changes in administrative data about the operator and operational status changes.

(5) [Reserved]

(6) *FCC Form 327, Application for Cable Television Relay Service Station License*. FCC Form 327 and associated schedules is used to apply for initial authorizations, modifications to existing authorizations, amendments to pending applications, and renewals of station authorizations. FCC Form 327 is also used to apply for Commission consent to assignments of existing CARS authorizations and to apply for Commission consent to the transfer of control of entities holding CARS authorizations.

(b) *Electronic filing*. Six months after the Commission announces their availability for electronic filing, all applications and other filings using FCC Forms 320, 321, 322, 324, and 327 and their respective associated schedules must be filed electronically in accordance with the electronic filing instructions provided by COALS.

(1) There will be two ways for parties to electronically file applications with the Commission: batch and interactive.

(i) *Batch filing*. Batch filing involves data transmission in a single action. Batch filers will follow a set Commission format for entering data. Batch filers will then send, via file transfer protocol, batches of data to the Commission for compiling. COALS will compile such filings overnight and respond the next business day with a return or dismissal of any defective filings. Thus, batch filers will not receive immediate correction from the system as they enter the information.

(ii) *Interactive filing*. Interactive filing involves data transmission with screen-by-screen prompting from the Commission's COALS system. Interactive filers will receive prompts from the system identifying data entries outside the acceptable ranges of data for the individual fields at the time the data entry is made.

(2) Attachments to applications must be uploaded along with the electronically filed application whenever possible.

(3) Any associated documents submitted with an application must be uploaded as attachments to the application whenever possible. The attachment should be uploaded via COALS in Adobe Acrobat Portable Document Format (PDF) whenever possible.

(c) *Manual filing*. (1) Forms 320, 321, 322, 324, and 327 may be filed manually.

(2) Manual filings must be submitted to the Commission at the appropriate address with the appropriate filing fee. The addresses for filing and the fee amounts for particular applications are listed in subpart G of this part, and in the appropriate fee filing guide for each service available from the Commission's Forms Distribution Center by calling 1–800–418–FORM (3676). The form may be downloaded from the Commission's Web site: *http://www.fcc.gov*.

(3) Manual filings requiring fees as set forth at subpart G, of this part must be filed in accordance with § 0.401(b) of this chapter.

(4) Manual filings that do not require fees must be addressed and sent to the Media Bureau at the FCC's main office, located at the address indicated in 47 CFR 0.401(a).

(5) FCC forms may be reproduced and the copies used in accordance with the provisions of § 0.409 of this chapter.

(d) *Applications requiring prior coordination*. Parties filing applications that require frequency coordination shall, prior to filing, complete all applicable frequency coordination requirements in § 78.36 of this chapter.

[68 FR 27001, May 19, 2003, as amended at 83 FR 61335, Nov. 29, 2018; 85 FR 64405, Oct. 13, 2020]

§ 1.1706 Content of filings.

(a) *General*. Filings must contain all information requested on the applicable form and any additional information required by the rules in this title and any rules pertaining to the specific service for which the filing is made.

(b) *Antenna locations*. Applications for CARS stations and aeronautical frequency usage notifications must describe each transmitting antenna site or center of the cable system, respectively, by its geographical coordinates. Geographical coordinates must be specified in degrees, minutes, and seconds to the nearest tenth of a second of latitude and longitude. Submissions must provide such data using the NAD83 datum.

(c) *Antenna structure registration*. Owners of certain antenna structures must notify the Federal Aviation Administration and register with the Commission as required by Part 17 of this chapter. Applications proposing the use of one or more new or existing antenna structures must contain the FCC Antenna Registration Number(s) of each structure for which registration is required. If registration is not required, the applicant must provide information in its application sufficient for the Commission to verify this fact.

(d) *Environmental concerns*. Each applicant is required to indicate at the time its application is filed whether a Commission grant of the application may have a significant environmental effect, as defined by § 1.1307. If yes, an Environmental Assessment, required by § 1.1311, must be filed with the application and environmental review by the Commission must be completed prior to construction.

(e) *International coordination*. Channel assignments and usage under part 78 are subject to the applicable provisions and requirements of treaties and other international agreements between the United States government and the governments of Canada and Mexico.

(f) *Taxpayer Identification Number (TINs)*. All filers are required to provide their Taxpayer Identification Numbers (TINS) (as defined in 26 U.S.C. 6109) to the Commission, pursuant to the Debt Collection Improvement Act of 1996 (DCIA). Under the DCIA, the FCC may use an applicant or licensee's TIN for purposes of collecting and reporting to the Department of the Treasury any delinquent amounts arising out of such person's relationship with the Government.

§ 1.1707 Acceptance of filings.

Regardless of filing method, all submissions with an insufficient fee, grossly deficient or inaccurate information, or those without a valid signature will be dismissed immediately. For any submission that is found subsequently to have minimally deficient or inaccurate information, we will notify the filer of the defect. We will allow 15 days from the date of this notification for correction or amendment of the submission if the amendment is minor. If the applicant files a timely corrected application, it will ordinarily be processed as a minor amendment in accordance with the Commission's rules.

Thus it will have no effect on the initial filing date of the application or the applicant's filing priority. If, however, the amendment made by the applicant is not a simple correction, but constitutes a major amendment to the application, it will be governed by the rules and procedures applicable to major amendments, that is, it will be treated as a new application with a new filing date and new fees must be paid by the applicant. Finally, if the applicant fails to submit an amended application within the period specified in the notification, the application will be subject to dismissal for failure to prosecute.

Subpart N—Enforcement of Nondiscrimination on the Basis of Disability In Programs or Activities Conducted By the Federal Communications Commission

SOURCE: 68 FR 22316, Apr. 28, 2003, unless otherwise noted.

§ 1.1801 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 (section 504) to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1.1802 Applications.

This part applies to all programs or activities conducted by the Federal Communications Commission. The programs or activities of entities that are licensed or certified by the Federal Communications Commission are not covered by these regulations.

§ 1.1803 Definitions.

For purposes of this part, the term—

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TTY/TDDs), interpreters, Computer-aided realtime transcription (CART), captioning, notetakers, written materials, and other similar services and devices.

Commission means Federal Communications Commission.

Complete complaint means a written statement, or a complaint in audio, Braille, electronic, and/or video format, that contains the complainant's name and address and describes the Commission's alleged discriminatory action in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. The signature of the complainant, or signature of someone authorized by the complainant to do so on his or her behalf, shall be provided on print complaints. Complaints in audio, Braille, electronic, and/or video formats shall contain an affirmative identity statement of the individual, which for this purpose shall be considered to be functionally equivalent to a complainant's signature. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property.

General Counsel means the General Counsel of the Federal Communications Commission.

Individual with a disability means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes, but is not limited to—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(iii) Diseases and conditions such as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(2) *Major life activities* include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Commission as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Commission as having such impairment.

Managing Director means the individual delegated authority as described in 47 CFR 0.11.

Programs or Activities mean any activity of the Commission permitted or required by its enabling statutes, including but not limited to any licensing or certification program, proceeding, investigation, hearing, meeting, board or committee.

Qualified individual with a disability means—

(1) With respect to any Commission program or activity under which an individual is required to perform services or to achieve a level of accomplishment, an individual with a disability who, with or without reasonable modification to rules, policies, or practices or the provision of auxiliary aids, meets the essential eligibility requirements for participation in the program or activity and can achieve the purpose of the program or activity; or

(2) With respect to any other program or activity, an individual with a disability who, with or without reasonable modification to rules, policies, or practices or the provision of auxiliary aids, meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; or

(3) The definition of that term as defined for purposes of employment in 29 CFR 1630.2(m), which is made applicable to this part by § 1.1840.

Section 504 means section 504 of the Rehabilitation Act of 1973, Public Law 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93–516, 88 Stat. 1617, and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Public Law 95–602, 92 Stat. 2955, and the Rehabilitation Act Amendments of 1986, sec. 103(d), Public Law 99–506, 100 Stat. 1810. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Section 504 means section 504 of the Rehabilitation Act of 1973, Public Law 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[68 FR 22316, Apr. 28, 2003, as amended at 76 FR 70909, Nov. 16, 2011]

§ 1.1805 Federal Communications Commission Section 504 Programs and Activities Accessibility Handbook.

The Consumer & Governmental Affairs Bureau shall publish a ''Federal Communications Commission Section

504 Programs and Activities Accessibility Handbook'' (''Section 504 Handbook'') for Commission staff, and shall update the Section 504 Handbook as necessary and at least every three years. The Section 504 Handbook shall be available to the public in hard copy upon request and electronically on the Commission's Internet website. The Section 504 Handbook shall contain procedures for releasing documents, holding meetings, receiving comments, and for other aspects of Commission programs and activities to achieve accessibility. These procedures will ensure that the Commission presents a consistent and complete accommodation policy pursuant to 29 U.S.C. 794, as amended. The Section 504 Handbook is for internal staff use and public information only, and is not intended to create any rights, responsibilities, or independent cause of action against the Federal Government.

§ 1.1810 Review of compliance.

(a) The Commission shall, beginning in 2004 and at least every three years thereafter, review its current policies and practices in view of advances in relevant technology and achievability. Based on this review, the Commission shall modify its practices and procedures to ensure that the Commission's programs and activities are fully accessible.

(b) The Commission shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the review process by submitting comments. Written comments shall be signed by the commenter or by someone authorized to do so on his or her behalf. The signature of the commenter, or signature of someone authorized by the commenter to do so on his or her behalf, shall be provided on print comments. Comments in audio, Braille, electronic, and/or video formats shall contain an affirmative identity statement of the individual, which for this purpose shall be considered to be functionally equivalent to a commenter's signature.

(c) The Commission shall maintain on file and make available for public inspection for four years following completion of the compliance review—

(1) A description of areas examined and problems identified;

(2) All comments and complaints filed regarding the Commission's compliance; and

(3) A description of any modifications made.

§ 1.1811 Notice.

The Commission shall make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the regulations set forth in this part, and their applicability to the programs or activities conducted by the Commission. The Commission shall make such information available to such persons in such manner as the Section 504 Officer finds necessary to apprise such persons of the protections against discrimination assured them by section 504.

§ 1.1830 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b) Discriminatory actions prohibited.

(1) The Commission, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified individual with a disability the opportunity to participate in any program or activity even where the Commission is also providing equivalent permissibly separate or different programs or activities for persons with disabilities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—

(i) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The Commission may not, in determining the site or location of a facility, make selections—

(i) That have the purpose or effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity conducted by the Commission; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The Commission may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the Commission establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the Commission are not, themselves, covered by this part.

(7) The Commission shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Commission can demonstrate that making the modifications would fundamentally alter the nature of the program, service, or activity.

(c) This part does not prohibit the exclusion of persons without disabilities from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§ 1.1840 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, as established by the Equal Employment Opportunity Commission in 29 CFR parts 1614 and 1630, as well as the procedures set forth in the Basic Negotiated Agreement Between the Federal Communications Commission and National Treasury Employees Union, as amended, and Subchapter III of the Civil Service Reform Act of 1978, 5 U.S.C. 7121(d), shall apply to employment in

federally conducted programs or activities.

[76 FR 70909, Nov. 16, 2011]

§ 1.1849 Program accessibility: Discrimination prohibited.

(a) Except as otherwise provided in § 1.1850, no qualified individual with a disability shall, because the Commission's facilities are inaccessible to, or unusable, by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b) Individuals shall request accessibility to the Commission's programs and facilities by contacting the Commission's Section 504 Officer. Such contact may be made in the manner indicated in the FCC Section 504 Handbook. The Commission will make every effort to provide accommodations requiring the assistance of other persons (e.g., American Sign Language interpreters, communication access realtime translation (CART) providers, transcribers, captioners, and readers) if the request is made to the Commission's Section 504 Officer a minimum of five business days in advance of the program. If such requests are made fewer than five business days prior to an event, the Commission will make every effort to secure accommodation services, although it may be less likely that the Commission will be able to secure such services.

§ 1.1850 Program accessibility: Existing facilities.

(a) *General*. Except as otherwise provided in this paragraph, the Commission shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity, or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1.1850(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Managing Director, in consultation with the Section 504 Officer, after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*. The Commission may comply with the requirements of this section through such means as the redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this section within sixty (60) days of the effective date of this subpart, except that where structural changes in facilities are undertaken, such changes shall be made within three (3) years of the effective date of this part.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission shall develop, within six (6) months of the effective date of this subpart, a transition plan setting forth the steps necessary to complete such changes. The Commission shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transitional plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one (1) year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1.1851 Building accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements and standards of the Architectural Barriers Act, 42 U.S.C. 4151–4157, as established in 41 CFR 102–76.60 to 102–76.95, apply to buildings covered by this section.

[76 FR 70909, Nov. 16, 2011]

§ 1.1870 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the Commission.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791.

(c) *Address for filing complaints.* Complaints alleging violation of section 504 with respect to the Commission's programs and activities shall be addressed to the Managing Director and filed with the Office of the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a).

(d) *Acceptance of complaint.* (1) The Commission shall accept and investigate all complete complaints, as defined in § 1.1803 of this part, for which it has jurisdiction. All such complaints must be filed within one-hundred eighty (180) days of the alleged act of discrimination. The Commission may extend this time period for good cause.

(2) If the Commission receives a complaint that is not complete as defined in § 1.1803 of this part, the complainant will be notified within thirty (30) days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within thirty (30) days of receipt of this notice, the Commission shall dismiss the complaint without prejudice.

(e) If the Commission receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Commission shall notify the United States Access Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151–4157, is not readily accessible to and usable by individuals with disabilities.

(g) Within one-hundred eighty (180) days of the receipt of a complete complaint, as defined in §1.1803, for which it has jurisdiction, the Commission shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within ninety (90) days of receipt from the Commission of the letter required by §1.1870(g). The Commission may extend this time for good cause.

(i) *Address for filing appeals.* Timely appeals shall be accepted and processed by the Office of the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a).

(j) The Commission shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the appeal request. If the Commission determines that it needs additional information from the complainant, and requests such information, the Commission shall have sixty (60) days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) of this section may be extended with the permission of the General Counsel.

(l) The Commission may delegate its authority for conducting complaint investigations to other federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[68 FR 22316, Apr. 28, 2003, as amended at 76 FR 70909, Nov. 16, 2011; 85 FR 64405, Oct. 13, 2020]

Subpart O—Collection of Claims Owed the United States

AUTHORITY: 31 U.S.C. 3701; 31 U.S.C. 3711 *et seq.;* 5 U.S.C. 5514; sec. 8(1) of E.O. 11609 (3 CFR, 1971–1975 Comp., p.586); redesignated in sec. 2–1 of E.O. 12107; (3 CFR, 1978 Comp., p. 264); 31 CFR parts 901–904; 5 CFR part 550.

SOURCE: 69 FR 27848, May 17, 2004, unless otherwise noted.

GENERAL PROVISIONS

§ 1.1901 Definitions and construction.

For purposes of this subpart:

(a) The term *administrative offset* means withholding money payable by the United States Government to, or held by the Government for, a person, organization, or entity to satisfy a debt the person, organization, or entity owes the Government.

(b) The term *agency* or *Commission* means the Federal Communications Commission (including the Universal Service Fund, the Telecommunications Relay Service Fund, and any other reporting components of the Commission) or any other agency of the U.S. Government as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined by section 102 of title 5 U.S.C., an agency or court of the judicial branch, or an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(c) The term *agency head* means the Chairman of the Federal Communications Commission.

(d) The term *application* includes in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.

(e) The terms claim and debt are deemed synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another Federal agency. For purposes of administrative offset under 31 U.S.C. 3716, the terms ''claim'' and ''debt'' include an amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. ''Claim'' and ''debt'' include amounts owed to the United States on account of extension of credit or loans made by, insured or guaranteed by the United States and all other amounts

due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, taxes, and forfeitures issued after a notice of apparent liability that have been partially paid or for which a court of competent jurisdiction has ordered payment and such order is final (except those arising under the Uniform Code of Military Justice), and other similar sources.

(f) The term *creditor agency* means the agency to which the debt is owed.

(g) The term *debt collection center* means an agency of a unit or subagency within an agency that has been designated by the Secretary of the Treasury to collect debt owed to the United States. The Financial Management Service (FMS), Fiscal Service, United States Treasury, is a debt collection center.

(h) The term *demand letter* includes written letters, orders, judgments, and memoranda from the Commission or on delegated authority.

(i) The term ''*delinquent*'' means a claim or debt which has not been paid by the date specified by the agency unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement or instrument with the agency, or pursuant to a Commission rule. For purposes of this subpart only, an installment payment under 47 CFR 1.2110(g) will not be considered deliquent until the expiration of all applicable grace periods and any other applicable periods under Commission rules to make the payment due. The rules set forth in this subpart in no way affect the Commission's rules, as may be amended, regarding payment for licenses (including installment, down, or final payments) or automatic cancellation of Commission licenses (see 47 CFR 1.1902(f)).

(j) The term *disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105(b) through (f) to determine disposable pay subject to salary offset.

(k) The term *employee* means a current employee of the Commission or of another agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserve).

(l) The term *entity* includes natural persons, legal associations, applicants, licensees, and regulatees.

(m) The term *FCCS* means the Federal Claims Collection Standards jointly issued by the Secretary of the Treasury and the Attorney General of the United States at 31 CFR parts 900–904.

(n) The term *paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

(o) The term *referral for litigation* means referral to the Department of Justice for appropriate legal proceedings except where the Commission has the statutory authority to handle the litigation itself.

(p) The term *reporting component* means any program, account, or entity required to be included in the Agency's Financial Statements by generally accepted accounting principles for Federal Agencies.

(q) The term *salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(r) The term *waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt or fee, including, but not limited to, a debt due to the United States, by an entity or an employee to an agency and as the waiver is permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 31 U.S.C. 3711, or any other law.

(s) Words in the plural form shall include the singular, and vice-versa, and words signifying the masculine gender shall include the feminine, and vice-versa. The terms *includes* and *including* do not exclude matters not listed but do include matters of the same general class.

[69 FR 27848, May 17, 2004, as amended at 76 FR 70909, Nov. 16, 2011]

§ 1.1902 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (see 41 CFR part 102–118).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations. (See 48 CFR part 32). If not otherwise provided for in the FAR, contract claims that have been the subject of a contracting officer's final decision in accordance with section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. 7103), may be determined, collected, compromised, terminated or settled under the provisions of this regulation, except that no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 7103), and the amount of any interest, administrative charge, or penalty charge shall be subject to the limitations, if any, contained in the contract out of which the claim arose.

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has authority to compromise, suspend, or terminate collection action on such claims. The standards in the FCCS relating to the administrative collection of claims do apply, but only to the extent authorized by the DOJ in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the Commission shall promptly refer the case to the Department of Justice for action. At its discretion, the DOJ may return the claim to the forwarding agency for further handling in accordance with the standards in the FCCS.

(d) Tax claims are excluded from the coverage of this regulation.

(e) The Commission will attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR 1980 Comp., pp. 409–412).

(f) Nothing in this subpart shall supersede or invalidate other Commission rules, such as the part 1 general competitive bidding rules (47 CFR part 1, subparts Q and AA) or the service specific competitive bidding rules, as may be amended, regarding the Commission's rights, including but not limited to the Commission's right to cancel a license or authorization, obtain judgment, or collect interest, penalties, and administrative costs.

[69 FR 27848, May 17, 2004, as amended at 76 FR 70909, Nov. 16, 2011; 85 FR 75814, Nov. 25, 2020]

§ 1.1903 Use of procedures.

Procedures authorized by this regulation (including, but not limited to, disclosure to a consumer reporting agency, contracting for collection services, administrative offset and salary offset) may be used singly or in combination, so long as the requirements of applicable law and regulation are satisfied.

§ 1.1904 Conformance to law and regulations.

The requirements of applicable law (31 U.S.C. 3701–3719, as amended by Public Law 97–365, 96 Stat. 1749 and Public Law 104–134, 110 Stat. 1321, 1358) have been implemented in government-wide standards which include the Regulations of the Office of Personnel Management (5 CFR part 550) and the Federal Claims Collection Standards issued jointly by the Secretary of the Treasury and the Attorney General of the United States (31 CFR parts 900–904). Not every item in the previous sentence described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the terms stated in these regulations, the Commission will proceed in any actions taken in accordance with

applicable requirements found in the standards referred to in this section.

§ 1.1905 Other procedures; collection of forfeiture penalties.

Nothing contained in these regulations is intended to require the Commission to duplicate administrative or other proceedings required by contract or other laws or regulations, nor do these regulations supercede procedures permitted or required by other statutes or regulations. In particular, the assessment and collection of monetary forfeitures imposed by the Commission will be governed initially by the procedures prescribed by 47 U.S.C. 503, 504 and 47 CFR 1.80. After compliance with those procedures, the Commission may determine that the collection of a monetary forfeiture under the collection alternatives prescribed by this subpart is appropriate but need not duplicate administrative or other proceedings. Fees and penalties prescribed by law, e.g., 47 U.S.C. 158 and 159, and promulgated under the authority of 47 U.S.C. 309(j) (e.g., 47 CFR part 1, subpart Q) may be collected as permitted by applicable law. Nothing contained herein is intended to restrict the Commission from exercising any other right to recover or collect amounts owed to it.

§ 1.1906 Informal action.

Nothing contained in these regulations is intended to preclude utilization of informal administrative actions or remedies which may be available (including, e.g., Alternative Dispute Resolution), and/or for the Commission to exercise rights as agreed to among the parties in written agreements, including notes and security agreements.

§ 1.1907 Return of property or collateral.

Nothing contained in this regulation is intended to deter the Commission from exercising any other right under law or regulation or by agreement it may have or possess, or to exercise its authority and right as a regulator under the Communications Act of 1934, as amended, and the Commission's rules, and demanding the return of specific property or from demanding, as a non-exclusive alternative, either the return of property or the payment of its value or the amount due the United States under any agreement or Commission rule.

§ 1.1908 Omissions not a defense.

The failure or omission of the Commission to comply with any provision in this regulation shall not serve as a defense to any debtor.

§ 1.1909 [Reserved]

§ 1.1910 Effect of insufficient fee payments, delinquent debts, or debarment.

(a)(1) An application (including a petition for reconsideration or any application for review of a fee determination) or request for authorization subject to the FCC Registration Number (FRN) requirement set forth in subpart W of this chapter will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits (*see, e.g.*, 31 CFR 285.13; 47 CFR part 1, subpart P).

(2) Fee payments, delinquent debt, and debarment will be examined based on the entity's taxpayer identifying number (TIN), supplied when the entity acquired or was assigned an FRN. See 47 CFR 1.8002(b)(1).

(b)(1) Applications by any entity found not to have paid the proper application or regulatory fee will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G.

(2) Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (see § 1.1901(i)), unless otherwise provided for in this regulation, e.g., 47 CFR 1.1928 (employee petition for a hearing). The entity will be informed that action will be withheld on the application until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made and/or that the application may be dismissed. See the provisions of §§ 1.1108, 1.1109, 1.1116, and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt

owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. 3717.

(3) If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.

(i) The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply if the applicant has timely filed a challenge through an administrative appeal or a contested judicial proceeding either to the existence or amount of the non-tax delinquent debt owed the Commission.

(ii) The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply where more restrictive rules govern treatment of delinquent debtors, such as 47 CFR 1.2105(a)(2)(xi) and (xii).

(c)(1) Applications for emergency or special temporary authority involving safety of life or property (including national security emergencies) or involving a brief transition period facilitating continuity of service to a substantial number of customers or end users, will not be subject to the provisions of paragraphs (a) and (b) of this section. However, paragraphs (a) and (b) will be applied to permanent authorizations for these services.

(2) The provisions of paragraphs (a) and (b) of this section will not apply to applications or requests for authorization to which 11 U.S.C. 525(a) is applicable.

[69 FR 57230, Sept. 24, 2004, as amended at 76 FR 70910, Nov. 16, 2011; 80 FR 56809, Sept. 18, 2015]

ADMINISTRATIVE OFFSET—CONSUMER REPORTING AGENCIES—CONTRACTING FOR COLLECTION

§ 1.1911 Demand for payment.

(a) Written demand as described in paragraph (b) of this section, and which may be in the form of a letter, order, memorandum, or other form of written communication, will be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate to resolve the debt. The specific content, timing, and number of demand letters depend upon the type and amount of the debt, including, e.g., any notes and the terms of agreements of the parties, and the debtor's response, if any, to the Commission's letters or telephone calls. One demand letter will be deemed sufficient. In determining the timing of the demand letter(s), the Commission will give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with the FCCS. When necessary to protect the Government's interest (for example, to prevent the expiration of a statute of limitations), written demand may be preceded by other appropriate actions under the FCCS, including immediate referral for litigation. The demand letter does not provide an additional period within to challenge the existence of, or amount of the non-tax debt if such time period has expired under Commission rules or other applicable limitation periods. Nothing contained herein is intended to limit the Commission's authority or discretion as may otherwise be permitted to collect debts owed.

(b) The demand letter will inform the debtor of:

(1) The basis for the indebtedness and the opportunities, if any, of the debtor to request review within the Commission;

(2) The applicable standards for assessing any interest, penalties, and administrative costs (§§ 1.1940 and 1.1941);

(3) The date by which payment is to be made to avoid late charges and enforced collection, which normally will not be more than 30 days from the date that the initial demand letter was mailed or hand-delivered; and

(4) The name, address, and phone number of a contact person or office within the Commission.

(c) The Commission will expend all reasonable effort to ensure that demand letters are mailed or hand-delivered on the same day that they are

dated. As provided for in any agreement among parties, or as may be required by exigent circumstances, the Commission may use other forms of delivery, including, e.g., facsimile telecopier or electronic mail. There is no prescribed format for demand letters. The Commission utilizes demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(d) The Commission may, as circumstances and the nature of the debt permit, include in demand letters such items as the Commission's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the Commission's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 120 days be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver. Where applicable, the debtor will be provided with a period of time (normally not more than 15 calendar days) from the date of the demand in which to exercise the opportunity to request a review.

(e) The Commission will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtors who dispute the debt that they must furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if the Commission determines to pursue, or is required to pursue, offset, the procedures applicable to offset in §§ 1.1912 and 1.1913, as applicable, will be followed. The availability of funds or money for debt satisfaction by offset and the Commission's determination to pursue collection by offset shall release the Commission from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, the Commission will advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification will follow the requirements of Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government will be advised that this notice has been given.

(h) When the Commission learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the Commission may immediately seek legal advice from its counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the Commission determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After seeking legal advice, a proof of claim will be filed in most cases with the bankruptcy court or the Trustee. The Commission will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the Commission is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, the Commission will determine from its counsel whether its payments to the debtor and payments of other agencies available for offset may be frozen by the Commission until relief from the automatic stay can be obtained from the bankruptcy court. The Commission will also determine from its counsel whether recoupment is available.

[69 FR 27848, May 17, 2004, as amended at 80 FR 43030, July 21, 2015]

§ 1.1912 Collection by administrative offset.

(a) *Scope.* (1) The term *administrative offset* has the meaning provided in § 1.1901.

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, the Commission will seek legal advice from its counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) The Commission is required to refer past due, legally enforceable nontax debts which are over 120 days delinquent to the Treasury for collection by centralized administrative offset. Debts which are less than 120 days delinquent also may be referred to the Treasury for this purpose. *See* FCCS for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to the Treasury as described in paragraph (b)(1) of this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(4)(i) Before referring a delinquent debt to the Treasury for administrative offset, and subject to any agreement and/or waiver to the contrary by the debtor, the Commission shall ensure that offsets are initiated only after the debtor:

(A) Has been sent written notice of the type and amount of the debt, the intention of the Commission to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(B) The debtor has been given:

(*1*) The opportunity to request within 15 days of the date of the written notice, after which opportunity is deemed waived, by the debtor, to inspect and copy Commission records related to the debt;

(*2*) The opportunity, unless otherwise waived by the debtor, for a review within the Commission of the determination of indebtedness; and

(*3*) The opportunity to request within 15 days of the date of the written notice, after which the opportunity is deemed waived by the debtor, for the debtor to make a written agreement to repay the debt.

(ii) The Commission may omit the procedures set forth in paragraph (b)(4)(i) of this section when:

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in Cecile Industries, Inc. v. Cheney, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, the Commission first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the Commission shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(iii) When the Commission previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (*see* 31 CFR 901.2), the Commission need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) Before the Commission refers delinquent debts to the Treasury, the Office of Managing Director must certify, in a form acceptable to the Treasury, that:

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) The Commission has complied with all due process requirements under 31 U.S.C. 3716(a) and its regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment certifying or authorizing agency. Also, the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment certifying or authorizing agency.

(7) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. *See* 31 CFR 285.4.

(8) In accordance with 31 U.S.C. 3716(f), the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from a creditor agency that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that the Commission conducts, at the Commission's discretion, internally or in cooperation with the

agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, a creditor agency may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for a creditor agency to request that the Office of Personnel Management (OPM) offset a Federal employee's lump-sum payment upon leaving Government service to satisfy an unpaid advance.

(2) The Commission will make reasonable effort to ensure that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (b)(4) of this section (subject to any waiver by the debtor); and

(ii) The payment authorizing agency has received written certification from the Commission that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(4) When collecting multiple debts by non-centralized administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

[69 FR 27848, May 17, 2004, as amended at 76 FR 24393, May 2, 2011; 80 FR 43031, July 21, 2015]

§ 1.1913 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

Upon providing the Office of Personnel Management (OPM) with written certification that a debtor has been afforded the procedures provided in § 1.1912(b)(4), the Commission may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in § 1.1914(a)(4).

§ 1.1914 Collection in installments.

(a) Subject to the Commission's rules pertaining to the installment loan program (*see e.g.*, 47 CFR § 1.2110(g)), subpart Q or other agreements among the parties, the terms of which will control, whenever feasible, the Commission shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments. The Commission will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and which are able to verify independently such representations (*see* 31 CFR 902.2(g)). The Commission will require and obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement, including, as appropriate, sureties and other indicia of creditworthiness (*see* Federal Credit Reform Act of 1990, 2 U.S.C. 661, *et seq.*, OMB Circular A–129), and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments will be obtained in appropriate cases. The Commission may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the Commission's option.

(d) The Commission may deny the extension of credit to any debtor who fails to provide the records requested or fails to show an ability to pay the debt.

§ 1.1915 Exploration of compromise.

The Commission may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in part 902 of the Federal Claims Collection Standards (31 CFR part 902). The Commission will also consider a request submitted by the debtor to compromise the debt. Such requests should be submitted in writing with full justification of the offer and addressing the bases for compromise at 31 CFR 902.2. Debtors will provide full financial information to support any request for compromise based on the debtor's inability to pay the debt. Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. The Commission will evaluate an offer, using the factors set forth in 31 CFR 902.2 and, as appropriate, refer the offer with the appropriate financial information to the Department of Justice. Department of Justice approval is not required if the Commission rejects a compromise offer.

§ 1.1916 Suspending or terminating collection action.

The suspension or termination of collection action shall be made in accordance with the standards set forth in part 903 of the Federal Claims Collection Standards (31 CFR part 903).

§ 1.1917 Referrals to the Department of Justice and transfer of delinquent debt to the Secretary of Treasury.

(a) Referrals to the Department of Justice shall be made in accordance with the standards set forth in part 904 of the Federal Claims Collection Standards (31 CFR part 904).

(b) The DCIA includes separate provisions governing the requirements that the Commission transfer delinquent debts to Treasury for general collection purposes (cross-servicing) in accordance with 31 U.S.C. 3711(g)(1) and (2), and notify Treasury of delinquent debts for the purpose of administrative offset in accordance with 31 U.S.C. 3716(c)(6). Title 31, U.S.C. 3711(g)(1) requires the Commission to transfer to Treasury all collection activity for a given debt. Under section 3711(g), Treasury will use all appropriate debt collection tools to collect the debt, including referral to a designated debt collection center or private collection agency, and administrative offset. Once a debt has been transferred to Treasury pursuant to the procedures at 31 CFR 285.12, the Commission will cease all collection activity related to that debt.

(c) All non-tax debts of claims owed to the Commission that have been delinquent for a period of 120 days shall be transferred to the Secretary of the Treasury. Debts which are less than 120 days delinquent may also be referred to the Treasury. Upon such transfer the Secretary of the Treasury shall take appropriate action to collect or terminate collection actions on the debt or claim. A debt is past-due if it has not been paid by the date specified in the Commission's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

[69 FR 27848, May 17, 2004, as amended at 80 FR 43031, July 21, 2015]

§ 1.1918 Use of consumer reporting agencies.

(a) The term *individual* means a natural person, and the term *consumer reporting agency* has the meaning provided in the Federal Claims Collection Act, as amended, 31 U.S.C. 3701(a)(3) or

the Fair Credit Reporting Act, 15 U.S.C. 168a(f).

(b) The Commission may disclose to a consumer reporting agency, or provide information to the Treasury who may disclose to a consumer reporting agency from a system of records, information that an individual is responsible for a claim. System information includes, for example, name, taxpayer identification number, business and home address, business and home telephone numbers, the amount of the debt, the amount of unpaid principle, the late period, and the payment history. Before the Commission reports the information, it will:

(1) Provide notice required by section 5 U.S.C. 552a(e)(4) that information in the system may be disclosed to a consumer reporting agency;

(2) Review the claim to determine that it is valid and overdue;

(3) Make reasonable efforts using information provided by the debtor in Commission files to notify the debtor, unless otherwise specified under the terms of a contract or agreement—

(i) That payment of the claim is overdue;

(ii) That, within not less than 60 days from the date of the notice, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for that claim;

(iii) That information in the system of records may be disclosed to the consumer reporting agency; and

(iv) That unless otherwise specified and agreed to in an agreement, contract, or by the terms of a note and/or security agreement, or that the debt arises from the nonpayment of a Commission fee, penalty, or other statutory or regulatory obligations, the individual will be provided with an explanation of the claim, and, as appropriate, procedures to dispute information in the records of the agency about the claim, and to administrative appeal or review of the claim; and

(4) Review Commission records to determine that the individual has not—

(i) Repaid or agreed to repay the claim under a written repayment plan agreed to and signed by both the individual and the Commission's representative; or, if eligible; and

(ii) Filed for review of the claim under paragraph (g) of this section;

(c) The Commission shall: (1) Disclose to each consumer reporting agency to which the original disclosure was made a substantial change in the condition or amount of the claim;

(2) Verify or correct promptly information about the claim, on request of a consumer reporting agency for verification of any or all information so disclosed; and

(3) Obtain assurances from each consumer reporting agency that they are complying with all laws of the United States relating to providing consumer credit information.

(d) The Commission shall ensure that information disclosed to the consumer reporting agency is limited to—

(1) Information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(2) The amount, status, and history of the claim; and

(3) The agency or program under which the claim arose.

(e) All accounts in excess of $100 that have been delinquent more than 31 days will normally be referred to a consumer reporting agency.

(f) Under the same provisions as described in paragraph (b) of this section, the Commission may disclose to a credit reporting agency, information relating to a debtor other than a natural person. Such commercial debt accounts are not covered by the Privacy Act. Moreover, commercial debt accounts are subject to the Commission's rules concerning debt obligation, including part 1 rules related to auction debt, and the agreements of the parties.

§ 1.1919 Contracting for collection services.

(a) Subject to the provisions of paragraph (b) of this section, the Commission may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts. In that regard, the Commission:

(1) Retains the authority to resolve disputes, compromise debts, suspend or terminate collection activity, and refer debts for litigation;

(2) Restricts the private collection contractor from offering, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless the Commission has granted such authority prior to the offer;

(3) Specifically requires, as a term of its contract with the private collection contractor, that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) Although the Commission will use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors, the Commission may refer debts to private collection contractors pursuant to a contract between the Commission and the private collection contractor in those situations where the Commission is not required to transfer debt to the Secretary of the Treasury for debt collection.

(c) Agencies may fund private collection contractor in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law.

(d) The Commission may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets, but it will first establish procedures that are acceptable to Treasury before entering into contracts to recover assets of the United States held by a state government or a financial institution.

(e) The Commission may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the Commission for such services may be payable from the amounts recovered, unless otherwise prohibited by statute. In that regard, fees for those services will be added to the amount collected and are part of the administrative collection costs passed on to the debtor. *See* § 1.1940.

§§ 1.1920–1.1924 [Reserved]

SALARY OFFSET-INDIVIDUAL DEBT

§ 1.1925 Purpose.

Sections 1.1925 through 1.1939 apply to individuals who are employees of the Commission and provides the standards to be followed by the Commission in implementing 5 U.S.C. 5514; sec. 8(1) of E.O. 11609 (3 CFR, 1971–1975 Comp., p.586); redesignated in sec. 2–1 of E.O. 12107 (3 CFR, 1978 Comp., p.264) to recover a debt from the pay account of a Commission employee. It also establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

§ 1.1926 Scope.

(a) *Coverage*. This section applies to the Commission and employees as defined by § 1.1901.

(b) *Applicability*. This section and 5 U.S.C. 5514 apply in recovering certain debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (31 CFR parts 900–904).

(1) *Excluded debts or claims*. The procedures contained in this section do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*) or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Section 1.1926 does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the Commissioner. Similarly, this subpart does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(c) *Time limit*. Under 31 CFR 901.3(a)(4) offset may not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless an exception applies as stated in section 901.3(a)(4).

§ 1.1927 Notification.

(a) Salary offset deductions will not be made unless the Managing Director of the Commission, or the Managing Director's designee, provides to the employee at least 30 days before any deduction, written notice stating at a minimum:

(1) The Commission's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Commission's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(4) An explanation of the Commission's policy concerning interest, penalties, and administrative costs (*See* §§ 1.1940 and 1.1941), a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the Commission) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Managing Director (or designee) of the Commission and documented in Commission files (see the FCCS).

(7) The employee's right to a hearing conducted by an official arranged by the Commission (an administrative law judge, or alternatively, a hearing official not under the control of the head of the Commission) if a petition is filed as prescribed by this subpart.

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That the final decision in the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of title 5, U.S.C., part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations.

(ii) Penalties under the False Claims Act sections 3729–3731 of title 31, U.S.C., or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, U.S.C., or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date of delivery, or shall be mailed by certified mail, return receipt requested.

(c) No notification, hearing, written responses or final decisions under this regulation are required by the Commission for:

(1) Any adjustment to pay arising out of an employee's election of coverage, or change in coverage, under a Federal benefit program requiring periodic deductions from pay, if the amount to be

recovered was accumulated over four pay periods or less;

(2) A routine intra-Commission adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 1.1928 Hearing.

(a) *Petition for hearing.* (1) An employee may request a hearing by filing a written petition with the Managing Director of the Commission, or designated official stating why the employee believes the determination of the Commission concerning the existence or the amount of the debt is in error.

(2) The employee's petition must be executed under penalty of perjury by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteenth (15) calendar day deadline referred to paragraph (a) (3) of this section, the Commission will nevertheless accept the petition if the employee can show, in writing, that the delay was due to circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (a) (3) of this section, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented by the Commission.

(b) *Type of hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of the Commission except that nothing herein shall be construed to prohibit the appointment of an administrative law judge by the Commission. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the Commission and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent him or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer shall be in writing, and shall state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt, and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the Commission.

§ 1.1929 Deduction from employee's pay.

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(1) Ordinarily, debts to the United States will be collected in full, in one lump sum. This will be done when funds are available for payment in one lump sum. However, if the employee is financially unable to pay in one lump

sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) The size of the installment deductions will bear a reasonable relationship to the size of the debt and the employee's ability to pay (*see* the FCCS). However, the installments will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(3) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following the date: of the employee's written consent to salary offset, the waiver of hearing, or the decision issued by the hearing officer.

(4) Installment deductions will be pro-rated for a period not greater than the anticipated period of employment except as provided in § 1.1930.

§ 1.1930 Liquidation from final check or recovery from other payment.

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance of the debt may be made from a final payment of any nature, including, but not limited to a final salary payment or lump-sum leave due the employee as the date of separation, to such extent as is necessary to liquidate the debt.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to § 1.1913.

§ 1.1931 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 1.1932 Refunds.

(a) Refunds shall promptly be made when—(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 1.1933 Interest, penalties and administrative costs.

The assessment of interest, penalties and administrative costs shall be in accordance with §§ 1.1940 and 1.1941.

§ 1.1934 Recovery when the Commission is not creditor agency.

(a) *Responsibilities of creditor agency*. Upon completion of the procedures established under 5 U.S.C. 5514, the creditor agency must do the following:

(1) Must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date of the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the Commission of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent or statement is forwarded to the Commission, the creditor agency also must advise the Commission of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a)(1) through (a)(3) of this section and

an installment agreement (or other instruction on the payment schedule), if applicable to the Commission.

(5) If the employee is in the process of separating, the creditor agency must submit its claim to the Commission for collection pursuant to §1.1930. The Commission will certify the total amount of its collection and provide copies to the creditor agency and the employee as stated in paragraph (c)(1) of this section. If the Commission is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that there has been full compliance with the provisions of this section. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(6) If the employee is already separated and all payments from the Commission have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (31 U.S.C. 3716 and 4 CFR 102.4)

(b) *Responsibilities of the Commission*—(1) *Complete claim.* When the Commission receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next official established pay interval. The Commission will notify the employee that the Commission has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the Commission receives an incomplete debt claim from a creditor agency, the Commission will return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided, and a properly certified debt claim received, before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Commission will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) Employees who transfer from one paying agency to another. (1) If, after the creditor agency has submitted the debt claim to the Commission, the employee transfers to a position served by a different paying agency before the debt is collected in full, the Commission must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

§ 1.1935 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the Commission designated in Appendix A of 5 CFR part 581 for a hearing official, and the Commission will then cooperate as provided by the FCCS and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of 5 CFR part 581 to arrange for a hearing official. Agencies must then cooperate as required by the FCCS and provide a hearing official.

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. A creditor agency may make a certification to the Secretary of the Treasury under 31 CFR 550.1108 or a paying agency under 31 CFR 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments, litigation, etc.

§ 1.1936 Administrative wage garnishment.

(a) *Purpose*. This section provides procedures for the Commission to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the United States.

(b) *Scope*. (1) This section applies to Commission-administered programs that give rise to a delinquent nontax debt owed to the United States and to the Commission's pursuit of recovery of such debt.

(2) This section shall apply notwithstanding any provision of State law.

(3) Nothing in this section precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900 through 904.

(4) The receipt of payments pursuant to this section does not preclude the Commission from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. The Commission may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This section does not apply to the collection of delinquent nontax debt owed to the Commission from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514, §§ 1.1925 through 1.1935, and other applicable laws.

(6) Nothing in this section requires the Commission to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions*. In addition to the definitions set forth in § 1.1901 as used in this section, the following definitions shall apply:

(1) *Business day means Monday through Friday*. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

(2) *Certificate of service* means a certificate signed by a Commission official indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent.

(3) *Day means calendar day*. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

(4) *Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld.

(5) *Amounts required by law to be withheld* include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

(6) *Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

(7) *Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

(8) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms ''wage garnishment

order'' and ''garnishment order'' have the same meaning as ''withholding order.''

(d) *General rule*. Whenever the Commission determines that a delinquent debt is owed by an individual, the Commission may initiate proceedings administratively to garnish the wages of the delinquent debtor as governed by procedures prescribed by 31 CFR 285. Wage garnishment will usually be performed for the Commission by the Treasury as part of the debt collection processes for Commission debts referred to Treasury for further collection action.

(e) *Notice requirements*. (1) At least 30 days before the initiation of garnishment proceedings, the Commission shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the Commission to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor's rights, including those set forth in paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the Commission under terms agreeable to the Commission; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The Commission will keep a copy of a certificate of service indicating the date of mailing of the notice. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(f) *Hearing*. Pursuant to 31 CFR 285.11(f)(1), the Commission hereby adopts by reference the hearing procedures of 31 CFR 285.11(f).

(g) *Wage garnishment order*. (1) Unless the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order, the Commission will send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the Commission to proceed with garnishment, or as soon as reasonably possible thereafter.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury on the Commission's letterhead and signed by the head of the Commission or his/her delegate. The order shall contain only the information necessary for the employer to comply with the withholding order, including the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The Commission will keep a copy of a certificate of service indicating the date of mailing of the order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(h) *Certification by employer*. Along with the withholding order, the Commission shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the Commission within the time frame prescribed in the instructions to the form addressing matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld*. (1) After receipt of the garnishment order issued under this section, the employer shall deduct

from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (i)(2) of this section.

(2) Subject to the provisions of paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment shall be the lesser of:

(i) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(ii) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(2) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to the Commission, the Commission may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section. For purposes of this paragraph (i)(3)(iii), the term *agency* refers to the Commission that is owed the debt.

(4) An amount greater than that set forth in paragraphs (i)(2) and (i)(3) of this section may be withheld upon the written consent of debtor.

(5) The employer shall promptly pay to the Commission all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Commission to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The Commission may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the Commission of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in demonstrated financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in demonstrated financial

hardship to the debtor, along with supporting documentation. The Commission will consider any information submitted; however, demonstrated financial hardship must be based on financial records that include Federal and state tax returns, affidavits executed under the pain and penalty of perjury, and, in the case of business-related financial hardship (e.g., the debtor is a partner or member of a business-agency relationship) full financial statements (audited and/or submitted under oath) in accordance with procedures and standards established by the Commission.

(3) If a financial hardship is found, the Commission will downwardly adjust, by an amount and for a period of time agreeable to the Commission, the amount garnisheed to reflect the debtor's financial condition. The Commission will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the Commission has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the Commission will send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, the Commission shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the Commission shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The Commission may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, ''termination of the collection action'' occurs when the Commission has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the Commission has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

§§ 1.1937–1.1939 [Reserved]

INTEREST, PENALTIES, ADMINISTRATIVE COSTS AND OTHER SANCTIONS

§ 1.1940 Assessment.

(a) Except as provided in paragraphs (g), (h), and (i) of this section or § 1.1941, the Commission shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. The Commission will mail, hand-deliver, or use other forms of transmission, including facsimile telecopier service, a written notice to the debtor, at the debtor's CORES contact address (see section 1.8002(b)) explaining the Commission's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement, or otherwise provided in the Commission's rules, as may be amended from time to time. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges. This provision is not intended to modify or limit the terms of any contract, note, or security agreement from the debtor, or to modify or limit the Commission's rights under its rules with regard to the notice or the parties' agreement to waive notice.

(b) The Commission shall charge interest on debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by the terms of any contract, note, or security agreement, regulation, or law.

(2) Unless otherwise established in a contract, note, or security agreement, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency should document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) The Commission shall assess administrative costs incurred for processing and handling delinquent debts, unless otherwise prohibited by statute. The calculation of administrative costs may be based on actual costs incurred or upon estimated costs as determined by the Commission. Commission administrative costs include the personnel and service costs (*e.g.*, telephone, copier, and overhead) to notify and collect the debt, without regard to the success of such efforts by the Commission.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, the Commission will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), currently not to exceed six percent (6%) a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency. If the rate permitted under 31 U.S.C. 3717 is changed, the Commission will apply that rate.

(e) The Commission may increase an *administrative debt* by the cost of living adjustment in lieu of charging interest and penalties under this section. *Administrative debt* includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts shall be computed annually. Agencies should use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal.

(g) The Commission will waive the collection of interest and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. The Commission will not extend this 30-day period except for good cause shown of extraordinary and compelling circumstances, completely documented and supported in writing, submitted and received before the expiration of the first 30-day period. The Commission may, on good cause shown of extraordinary and compelling circumstances, completely documented and supported in writing, waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria

set forth in these standards for the compromise of debts, or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) The Commission retains the common law right to impose interest and related charges on debts not subject to 31 U.S.C. 3717.

[69 FR 27848, May 17, 2004, as amended at 83 FR 47097, Sept. 18, 2018]

§ 1.1941 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws. However, the Commission is authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 1.1942 Other sanctions.

The remedies and sanctions available to the Commission in this subpart are not exclusive. The Commission may impose other sanctions, where permitted by law, for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In such cases, the Commission will provide notice, as required by law, to the debtor prior to imposition of any such sanction.

§§ 1.1943–1.1949 [Reserved]

COOPERATION WITH THE INTERNAL REVENUE SERVICE

§ 1.1950 Reporting discharged debts to the Internal Revenue Service.

(a) In accordance with applicable provisions of the Internal Revenue Code and implementing regulations (26 U.S.C. 6050P; 26 CFR 1.6050P–1), when the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099–C or any other form prescribed by the Service, when:

(1) The principle amount of the debt not in dispute is $600 or more; and

(2) The obligation has not been discharged in a bankruptcy proceeding; and

(3) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

(b) The Treasury will prepare the Form 1099–C for those debts transferred to Treasury for collection and deemed uncollectible.

§ 1.1951 Offset against tax refunds.

The Commission will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 1.1952 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this subpart or other authority, the Commission may send a request to the Secretary of the Treasury (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) The Commission is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

GENERAL PROVISIONS CONCERNING INTERAGENCY REQUESTS

§ 1.1953 Interagency requests.

(a) Requests to the Commission by other Federal agencies for administrative or salary offset shall be in writing and forwarded to the Financial Operations Center at the FCC's main office, located at the address indicated in 47 CFR 0.401(a).

(b) Requests by the Commission to other Federal agencies holding funds payable to the debtor will be in writing and forwarded, certified return receipt, as specified by that agency in its regulations. If the agency's rules governing this matter are not readily available or identifiable, the request will be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from the Commission shall be accompanied by a certification that the debtor owes the debt (including the amount) and that the procedures for administrative or salary offset contained in this subpart, or comparable procedures prescribed by the requesting agency, have been fully complied with. The Commission will cooperate with other agencies in effecting collection.

(d) Requests to and from the Commission shall be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days will be forwarded 10 calendar days prior to the expiration of the first 30-day period.

[69 FR 27848, May 17, 2004, as amended at 85 FR 64405, Oct. 13, 2020]

Subpart P—Implementation of the Anti-Drug Abuse Act of 1988

SOURCE: 57 FR 187, Jan. 3, 1992, unless otherwise noted.

§ 1.2001 Purpose.

To determine eligibility for professional and/or commercial licenses issued by the Commission with respect to any denials of Federal benefits imposed by Federal and/or state courts under authority granted in 21 U.S.C. 862.

[60 FR 39269, Aug. 2, 1995]

§ 1.2002 Applicants required to submit information.

(a) In order to be eligible for any new, modified, and/or renewed instrument of authorization from the Commission, including but not limited to, authorizations issued pursuant to sections 214, 301, 302, 303(1), 308, 310(d), 318, 319, 325(b), 351, 361(b), 362(b), 381, and 385 of the Communications Act of 1934, as amended, by whatever name that instrument may be designated, all applicants shall certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. 21 U.S.C. 862. If a section 5301 certification has been incorporated into the FCC application form being filed, the applicant need not submit a separate certification. If a section 5301 certification has not been incorporated into the FCC application form being filed, the applicant shall be deemed to have certified by signing the application, unless an exhibit is included stating that the signature does not constitute such a certification and explaining why the applicant is unable to certify. If no FCC application form is involved, the applicant must attach a certification to its written application. If the applicant is unable to so certify, the applicant shall be ineligible for the authorization for which it applied, and will have 90 days from the filing of the application to comply with this rule. If a section 5301 certification has been incorporated into the FCC application form, failure to respond to the question concerning certification shall result in dismissal of the application pursuant to the relevant processing rules.

(b) A party to the application, as used in paragraph (a) of this section shall include:

(1) If the applicant is an individual, that individual;

(2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) of the applicant; and

(3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership.

(c) The provisions of paragraphs (a) and (b) of this section are not applicable to the Amateur Radio Service, the Citizens Band Radio Service, the Radio Control Radio Service, to users in the Public Mobile Services and the Private Radio Services that are not individually licensed by the Commission, or to Federal, State or local governmental entities or subdivisions thereof.

(d) The provisions of paragraphs (a) and (b) of this section are applicable to spectrum lessees (*see* § 1.9003 of subpart X of this part) engaged in spectrum manager leasing arrangements and *de facto* transfer leasing arrangements pursuant to the rules set forth in subpart X of this part.

[57 FR 187, Jan. 3, 1992, as amended at 58 FR 8701, Feb. 17, 1993; 60 FR 39269, Aug. 2, 1995; 68 FR 66277, Nov. 25, 2003]

Subpart Q—Competitive Bidding Proceedings

SOURCE: 59 FR 44293, Aug. 26, 1994, unless otherwise noted.

GENERAL PROCEDURES

§ 1.2101 Purpose.

The provisions of §§ 1.2101 through 1.2115 implement section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) and subsequent amendments.

[84 FR 1630, Feb. 5, 2019]

§ 1.2102 Eligibility of applications for competitive bidding.

(a) Mutually exclusive initial applications are subject to competitive bidding.

(b) The following types of license applications are not subject to competitive bidding procedures:

(1) Public safety radio services, including private internal radio services used by state and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that

(i) Are used to protect the safety of life, health, or property; and

(ii) Are not commercially available to the public;

(2) Initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or

(3) Noncommercial educational and public broadcast stations described under 47 U.S.C. 397(6).

(c) [Reserved]

NOTE TO § 1.2102: To determine the rules that apply to competitive bidding, specific service rules should also be consulted.

[59 FR 44293, Aug. 26, 1994, as amended at 60 FR 40718, Aug. 9, 1995; 62 FR 23163, Apr. 29, 1997; 63 FR 10780, Mar. 5, 1998; 79 FR 48528, Aug. 15, 2014]

§ 1.2103 Competitive bidding design options.

(a) *Public notice of competitive bidding design options.* Prior to any competitive bidding for initial licenses, public notice shall be provided of the detailed procedures that may be used to implement auction design options.

(b) *Competitive bidding design options.* The public notice detailing competitive bidding procedures may establish procedures for collecting bids, assigning winning bids, and determining payments, including without limitation:

(1) *Procedures for collecting bids.* (i) Procedures for collecting bids in a single round or in multiple rounds.

(ii) Procedures allowing for bids for specific items, bids for generic items in one or more categories of items, or bids for one or more aggregations of items.

(iii) Procedures allowing for bids that specify a price, indicate demand at a specified price, or provide other information as specified by competitive bidding policies, rules, and procedures.

(iv) Procedures allowing for bids that are contingent on specified conditions,

such as other bids being accepted or for packages of licenses being awarded.

(v) Procedures to collect bids in one or more stages, including procedures for transitions between stages.

(vi) Procedures for whether, when, and how bids may be modified during the auction.

(2) *Procedures for assigning winning bids*. (i) Procedures that take into account one or more factors in addition to the submitted bid amount, including but not limited to the amount of bids submitted in separate competitive bidding.

(ii) Procedures to assign specific items to bidders following bidding for quantities of generic items.

(iii) Procedures to incorporate public interest considerations into the process for assigning winning bids.

(3) *Procedures for determining payments*. Procedures to determine the amount of any payments made to or by winning bidders consistent with other auction design choices.

[79 FR 48528, Aug. 15, 2014]

§ 1.2104 Competitive bidding mechanisms.

(a) *Sequencing*. The Commission will establish the sequence in which multiple licenses will be auctioned.

(b) *Grouping*. In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reserve Price*. The Commission may establish a reserve price or prices, either disclosed or undisclosed, below which a license or licenses subject to auction will not be awarded. For any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) requiring the recovery of estimated relocation costs, the Commission will establish a reserve price or prices pursuant to which the total cash proceeds from any auction of eligible frequencies shall equal at least 110 percent of the total estimated relocation costs provided to the Commission by the National Telecommunications and Information Administration pursuant to section 113(g)(4) of such Act (47 U.S.C. 923(g)(4)).

(d) *Minimum Bid Increments, Minimum Opening Bids and Maximum Bid Increments*. The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission also may establish minimum opening bids and maximum bid increments on a service-specific basis.

(e) *Stopping procedures*. Before or during an auction, procedures may be established regarding when bidding will stop for a round, a stage, or an entire auction, in order to terminate the auction within a reasonable time and in accordance with public interest considerations and the goals, statutory requirements, rules, and procedures for the auction, including any reserve price or prices.

(f) *Activity Rules*. The Commission may establish activity rules which require a minimum amount of bidding activity.

(g) *Withdrawal, Default and Disqualification Payment*. As specified below, when the Commission conducts an auction pursuant to § 1.2103, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) *Bid withdrawal prior to close of auction*. A bidder that withdraws a bid during the course of an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). In the event that a bidding credit applies to any of the bids, the bid withdrawal payment is either the difference between the net withdrawn bid and the subsequent net winning bid, or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing

bidder has deposited with the Commission. In the case of multiple bid withdrawals on a single license, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn in the same or subsequent auction(s). In the event that a license for which there have been withdrawn bids subject to withdrawal payments is not won in the same auction, those bidders for which a final withdrawal payment cannot be calculated will be assessed an interim bid withdrawal payment of between 3 and 20 percent of their withdrawn bids, according to a percentage (or percentages) established by the Commission in advance of the auction. The interim bid withdrawal payment will be applied toward any final bid withdrawal payment that will be assessed at the close of a subsequent auction of the corresponding license.

Example 1 to paragraph (g)(1). Bidder A withdraws a bid of $100. Subsequently, Bidder B places a bid of $90 and withdraws. In that same auction, Bidder C wins the license at a bid of $95. Withdrawal payments are assessed as follows: Bidder A owes $5 ($100–$95). Bidder B owes nothing.

Example 2 to paragraph (g)(1). Bidder A withdraws a bid of $100. Subsequently, Bidder B places a bid of $95 and withdraws. In that same auction, Bidder C wins the license at a bid of $90. Withdrawal payments are assessed as follows: Bidder A owes $5 ($100–$95). Bidder B owes $5 ($95–$90).

Example 3 to paragraph (g)(1). Bidder A withdraws a bid of $100. Subsequently, in that same auction, Bidder B places a bid of $90 and withdraws. In a subsequent auction, Bidder C places a bid of $95 and withdraws. Bidder D wins the license in that auction at a bid of $80. Assuming that the Commission established an interim bid withdrawal payment of 3 percent in advance of the first auction, withdrawal payments are assessed as follows: At the end of the first auction, Bidder A and Bidder B are each assessed an interim withdrawal payment equal to 3 percent of their withdrawn bids pending Commission assessment of a final withdrawal payment (Bidder A would owe 3% of $100, or $3, and Bidder B would owe 3% of $90, or $2.70). At the end of the second auction, Bidder A would owe $5 ($100–$95) less the $3 interim withdrawal payment for a total of $2. Because Bidder C placed a subsequent bid that was higher than Bidder B's $90 bid, Bidder B would owe nothing. Bidder C would owe $15 ($95–$80).

(2) *Default or disqualification after close of auction.* A bidder assumes a binding obligation to pay its full bid amount upon acceptance of the winning bid at the close of an auction. If a bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to a default payment consisting of a deficiency payment, described in §1.2104(g)(2)(i), and an additional payment, described in §1.2104(g)(2)(ii) and (g)(2)(iii). The default payment will be deducted from any upfront payments or down payments that the defaulting bidder has deposited with the Commission.

(i) *Deficiency payment.* The deficiency payment will equal the difference between the amount of the defaulted bid and the amount of the winning bid in a subsequent auction, so long as there have been no intervening withdrawn bids that equal or exceed the defaulted bid or the subsequent winning bid. If the subsequent winning bid or any intervening subsequent withdrawn bid equals or exceeds the defaulted bid, no deficiency payment will be assessed. If there have been intervening subsequent withdrawn bids that are lower than the defaulted bid and higher than the subsequent winning bid, but no intervening withdrawn bids that equal or exceed the defaulted bid, the deficiency payment will equal the difference between the amount of the defaulted bid and the amount of the highest intervening subsequent withdrawn bid. In the event that a bidding credit applies to any of the applicable bids, the deficiency payment will be based solely on net bids or solely on gross bids, whichever results in a lower payment.

(ii) *Additional payment—applicable percentage.* When the default or disqualification follows an auction without combinatorial bidding, the additional payment will equal between 3 and 20 percent of the applicable bid, according to a percentage (or percentages) established by the Commission in advance of the auction. When the default or disqualification follows an auction with combinatorial bidding, the additional payment will equal 25 percent of the applicable bid.

(iii) *Additional payment—applicable bid*. When no deficiency payment is assessed, the applicable bid will be the net amount of the defaulted bid. When a deficiency payment is assessed, the applicable bid will be the subsequent winning bid, using the same basis—i.e., net or gross—as was used in calculating the deficiency payment.

(h) The Commission will generally release information concerning the identities of bidders before each auction but may choose, on an auction-by-auction basis, to withhold the identity of the bidders associated with bidder identification numbers.

(i) The Commission may delay, suspend, or cancel an auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

(j) *Bid apportionment*—(1) *Apportioned license bid*. The Commission may specify a method for apportioning a bid among portions of the license (*i.e.*, portions of the license's service area or bandwidth, or both) when necessary to compare a bid on the original license or portions thereof with a bid on a corresponding reconfigured license for purposes of the Commission's rules or procedures, such as to calculate a bid withdrawal or default payment obligation in connection with the bid.

(2) *Apportioned package bid*. The apportioned package bid on a license is an estimate of the price of an individual license included in a package of licenses in an auction with combinatorial (package) bidding. Apportioned package bids shall be determined by the Commission according to a methodology it establishes in advance of each auction with combinatorial bidding. The apportioned package bid on a license included in a package shall be used in place of the amount of an individual bid on that license when the bid amount is needed to determine the size of a designated entity bidding credit (see §1.2110(f)(1), (f)(2), and (f)(4)), a new entrant bidding credit (see §73.5007 of this chapter), a bid withdrawal or default payment obligation (see §1.2104(g)), a tribal land bidding credit limit (see §1.2110(f)(3)), or a size-based bidding credit unjust enrichment payment obligation (see §1.2111(b), (c)(2) and (c)(3)), or for any other determination required by the Commission's rules or procedures.

[59 FR 44293, Aug. 26, 1994, as amended at 63 FR 2341, Jan. 15, 1998; 65 FR 52344, Aug. 29, 2000; 68 FR 42995, July 21, 2003; 71 FR 6226, Feb. 7, 2006; 79 FR 48529, Aug. 15, 2014; 80 FR 56809, Sept. 18, 2015]

§1.2105 Bidding application and certification procedures; prohibition of certain communications.

(a) *Submission of Short-Form Application (FCC Form 175)*. In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate upfront payment set forth by Public Notice. All short-form applications must be filed electronically.

(1) All short-form applications will be due:

(i) On the date(s) specified by public notice; or

(ii) In the case of application filing dates which occur automatically by operation of law, on a date specified by public notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The short-form application must contain the following information, and all information, statements, certifications and declarations submitted in the application shall be made under penalty of perjury:

(i) Identification of each license, or category of licenses, on which the applicant wishes to bid.

(ii)(A) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all general partners, and, if a partner is

not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons; and

(B) Applicant ownership and other information, as set forth in § 1.2112.

(iii) The identity of the person(s) authorized to make or withdraw a bid. No person may serve as an authorized bidder for more than one auction applicant;

(iv) If the applicant applies as a designated entity, a certification that the applicant is qualified as a designated entity under § 1.2110.

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) Certification that the applicant has provided in its application a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls as defined in paragraph (a)(4) of this section or is controlled by the applicant, is a party.

(ix) Certification that the applicant (or any party that controls as defined in paragraph (a)(4) of this section or is controlled by the applicant) has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure with: any other applicant (or any party that controls or is controlled by another applicant); with a nationwide provider that is not an applicant (or any party that controls or is controlled by such a nationwide provider); or, if the applicant is a nationwide provider, with any non-nationwide provider that is not an applicant (or with any party that controls or is controlled by such a non-nationwide provider), other than:

(A) Agreements, arrangements, or understandings of any kind that are solely operational as defined under paragraph (a)(4) of this section;

(B) Agreements, arrangements, or understandings of any kind to form consortia or joint ventures as defined under paragraph (a)(4) of this section;

(C) Agreements, arrangements or understandings of any kind with respect to the transfer or assignment of licenses, provided that such agreements, arrangements or understandings do not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid), or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure.

(x) Certification that if applicant has an interest disclosed pursuant to § 1.2112(a)(1) through (6) with respect to more than one short-form application for an auction, it will implement internal controls that preclude any individual acting on behalf of the applicant as defined in paragraph (c)(5) of this

section from possessing information about the bids or bidding strategies (including post-auction market structure), of more than one party submitting a short-form application or communicating such information with respect to a party submitting a short-form application to anyone possessing such information regarding another party submitting a short-form application.

(xi) Certification that the applicant is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency.

(xii) A certification indicating whether the applicant has ever been in default on any Commission license or has ever been delinquent on any non-tax debt owed to any Federal agency. For purposes of this certification, an applicant may exclude from consideration as a former default any default on a Commission license or delinquency on a non-tax debt to any Federal agency that has been resolved and meets any of the following criteria:

(A) The notice of the final payment deadline or delinquency was received more than seven years before the short-form application deadline;

(B) The default or delinquency amounted to less than $100,000;

(C) The default or delinquency was paid within two quarters (*i.e.*, 6 months) after receiving the notice of the final payment deadline or delinquency; or

(D) The default or delinquency was the subject of a legal or arbitration proceeding that was cured upon resolution of the proceeding.

(xiii) For auctions required to be conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) or in which any spectrum usage rights for which licenses are being assigned were made available under 47 U.S.C. 309(j)(8)(G)(i), certification under penalty of perjury that the applicant and all of the person(s) disclosed under paragraph (a)(2)(ii) of this section are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant. For the purposes of this certification, the term ''person'' means an individual, partnership, association, joint-stock company, trust, or corporation, and the term ''reasons of national security'' means matters relating to the national defense and foreign relations of the United States.

(3) *Limit on filing applications*. In any auction, no individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium. In the event that applications for an auction are filed by applicants with overlapping controlling interests, pursuant to paragraph (b)(1)(ii) of this section, both applications will be deemed incomplete and only one such applicant may be deemed qualified to bid. This limit shall not apply to any qualifying rural wireless partnership and individual members of such partnerships. A qualifying rural wireless partnership for purposes of this exception is one that was established as a result of the cellular B block settlement process established by the Commission in CC Docket No. 85–388 in which no nationwide provider is a managing partner or a managing member of the management committee, and partnership interests have not materially changed as of the effective date of the Report and Order in WT Docket No. 14–170, FCC 15–80. A partnership member for purposes of this exception is a partner or successor-in-interest to a partner in a qualifying partnership that does not have day-to-day management responsibilities in the partnership and holds 25% or less ownership interest, and provides a certification in its short-form application that it will implement internal controls to insulate itself from the bidding process of the cellular partnership and any other members of the partnership, except that it may, prior to the deadline for resubmission of short-form applications, express to the partnership the maximum it is willing to spend as a partner.

(4) *Definitions*. For purposes of the certifications required under paragraph (a)(2) of this section:

(i) The term *controlling interest* includes individuals or entities with positive or negative *de jure* or *de facto* control of the applicant. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium.

(ii) The term *consortium* means an entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities that individually are eligible to claim the same designated entity benefits under § 1.2110, provided that no member of the consortium may be a nationwide provider;

(iii) The term *joint venture* means a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities, provided that no member of the joint venture may be a nationwide provider;

(iv) The term *solely operational agreement* means any agreement, arrangement, or understanding of any kind that addresses operational aspects of providing a mobile service, including but not limited to agreements for roaming, device acquisition, and spectrum leasing and other spectrum use arrangements, so long as the agreement does not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure.

NOTE TO PARAGRAPH (a): The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) *Modification and Dismissal of Short-Form Application (FCC Form 175).* (1) (i) Any short-form application (FCC Form 175) that does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to the applicable filing deadline. The application will be deemed incomplete, the applicant will not be found qualified to bid, and the upfront payment, if paid, will be returned.

(ii) If:

(A) An individual or entity submits multiple applications in a single auction; or

(B) Entities commonly controlled by the same individual or same set of individuals submit applications for any set of licenses in the same or overlapping geographic areas in a single auction; then only one of such applications may be deemed complete, and the other such application(s) will be deemed incomplete, such applicants will not be found qualified to bid, and the associated upfront payment(s), if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except for failure to sign the application and to make certifications) and to resubmit a corrected application. During the resubmission period for curing defects, a short-form application may be amended or modified to cure defects identified by the Commission or to make minor amendments or modifications. After the resubmission period has ended, a short-form application may be amended or modified to make minor changes or correct minor errors in the application. Major amendments cannot be made to a short-form application

after the initial filing deadline. Major amendments include changes in ownership of the applicant that would constitute an assignment or transfer of control, changes in an applicant's size which would affect eligibility for designated entity provisions, and changes in the license service areas identified on the short-form application on which the applicant intends to bid. Minor amendments include, but are not limited to, the correction of typographical errors and other minor defects not identified as major. An application will be considered to be newly filed if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicants who fail to correct defects in their applications in a timely manner as specified by public notice will have their applications dismissed with no opportunity for resubmission.

(4) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

(c) *Prohibition of certain communications.* (1) After the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline, unless such communications are within the scope of an agreement described in paragraphs (a)(2)(ix)(A) through (C) of this section that is disclosed pursuant to paragraph (a)(2)(viii) of this section.

(2) Any party submitting a short-form application that has an interest disclosed pursuant to §1.2112(a)(1) through (6) with respect to more than one short-form application for an auction must implement internal controls that preclude any individual acting on behalf of the applicant as defined for purposes of this paragraph from possessing information about the bids or bidding strategies of more than one party submitting a short-form or communicating such information with respect to a party submitting a short-form application to anyone possessing such information regarding another party submitting a short-form application. Implementation of such internal controls will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.

(3) An applicant must modify its short-form application to reflect any changes in ownership or in membership of a consortium or a joint venture or agreements or understandings related to the licenses being auctioned.

(4) A party that makes or receives a communication prohibited under paragraphs (c)(1) or (6) of this section shall report such communication in writing immediately, and in any case no later than five business days after the communication occurs. A party's obligation to make such a report continues until the report has been made. Such reports shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no public notice provides direction, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available, including electronic transmission such as email.

(5) For purposes of this paragraph:

(i) The term *applicant* shall include all controlling interests in the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of partnership and other ownership interests and

any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium; and

(ii) The term *bids* or *bidding strategies* shall include capital calls or requests for additional funds in support of bids or bidding strategies.

Example: Company A is an applicant in area 1. Company B and Company C each own 10 percent of Company A. Company D is an applicant in area 1, area 2, and area 3. Company C is an applicant in area 3. Without violating the Commission's Rules, Company B can enter into a consortium arrangement with Company D or acquire an ownership interest in Company D if Company B certifies either:

(*1*) That it has communicated with and will communicate neither with Company A or anyone else concerning Company A's bids or bidding strategy, nor with Company C or anyone else concerning Company C's bids or bidding strategy, or

(*2*) that it has not communicated with and will not communicate with Company D or anyone else concerning Company D's bids or bidding strategy.

(6) Prohibition of certain communications for the broadcast television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96).

(i) For the purposes of the prohibition described in paragraphs (c)(6)(ii) and (iii) of this section, the term *forward auction applicant* is defined the same as the term *applicant* is defined in paragraph (c)(5) of this section, and the terms *full power broadcast television licensee* and *Class A broadcast television licensee* are defined the same as those terms are defined in § 1.2205(a)(1).

(ii) Except as provided in paragraph (c)(6)(iii) of this section, in the broadcast television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96), beginning on the short-form application filing deadline for the forward auction and until the results of the incentive auction are announced by public notice, all forward auction applicants are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any full power or Class A broadcast television licensee.

(iii) The prohibition described in paragraph (c)(6)(ii) of this section does not apply to communications between a forward auction applicant and a full power or Class A broadcast television licensee if a controlling interest, director, officer, or holder of any 10 percent or greater ownership interest in the forward auction applicant, as of the deadline for submitting short-form applications to participate in the forward auction, is also a controlling interest, director, officer, or governing board member of the full power or Class A broadcast television licensee, as of the deadline for submitting applications to participate in the reverse auction.

NOTE 1 TO PARAGRAPH (c): For the purposes of paragraph (c), ''controlling interests'' include individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions.

NOTE 2 TO PARAGRAPH (c): The prohibition described in paragraph (c)(6)(ii) of this section applies to controlling interests, directors, officers, and holders of any 10 percent or greater ownership interest in the forward auction applicant as of the deadline for submitting short-form applications to participate in the forward auction, and any additional such parties at any subsequent point prior to the announcement by public notice

of the results of the incentive auction. Thus, if, for example, a forward auction applicant appoints a new officer after the short-form application deadline, that new officer would be subject to the prohibition in paragraph (c)(6)(ii) of this section, but would not be included within the exception described in paragraph (c)(6)(iii) of this section.

[80 FR 56809, Sept. 18, 2015]

§ 1.2106 Submission of upfront payments.

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. Any auction applicant that, pursuant to § 1.2105(a)(2)(xii), certifies that it is a former defaulter must submit an upfront payment equal to 50 percent more than the amount that otherwise would be required. No interest will be paid on upfront payments.

(b) Upfront payments must be made by wire transfer in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(c) If an upfront payment is not in compliance with the Commission's Rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder. Where the upfront payment amount exceeds the required deposit of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal penalties are owed by that bidder.

(e) In accordance with the provisions of paragraph (d), in the event a penalty is assessed pursuant to § 1.2104 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default penalty before being applied toward any additional payment obligations that the high bidder may have.

[59 FR 44293, Aug. 26, 1994, as amended at 62 FR 13543, Mar. 21, 1997; 65 FR 52345, Aug. 29, 2000; 79 FR 48530, Aug. 15, 2014; 80 FR 56813, Sept. 18, 2015]

§ 1.2107 Submission of down payment and filing of long-form applications.

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

(b) Unless otherwise specified by public notice, within ten (10) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the ''down payment'') as are necessary to bring its total deposits (not including upfront payments applied to satisfy bid withdrawal or default payments) up to twenty (20) percent of its high bid(s). (In single round sealed bid auctions conducted under § 1.2103, however, bidders may be required to submit their down payments with their bids.) Unless otherwise specified by public notice, this down payment must be made by wire transfer in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license or authorization, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable payments. No interest on any down payment will be paid to the bidders.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high

bidder, submit an additional application (the ''long-form application'') pursuant to the rules governing the service in which the applicant is the high bidder. Except as otherwise provided in §1.1104, high bidders need not submit an additional application filing fee with their long-form applications. Specific procedures for filing applications will be set out by Public Notice. Ownership disclosure requirements are set forth in §1.2112. Beginning January 1, 1999, all long-form applications must be filed electronically. An applicant that fails to submit the required long-form application under this paragraph and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in §1.2104.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to §1.2105.

(e) A winning bidder that seeks a bidding credit to serve a qualifying tribal land, as defined in §1.2110(f)(3)(i), within a particular market must indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within that market.

(f) An applicant must also submit FCC Form 602 (*see* §1.919 of this chapter) with its long form application (FCC Form 601).

(g)(1)(i) A consortium participating in competitive bidding pursuant to §1.2110(b)(4)(i) that is a winning bidder may not apply as a consortium for licenses covered by the winning bids. Individual members of the consortium or new legal entities comprising individual consortium members may apply for the licenses covered by the winning bids of the consortium. An individual member of the consortium or a new legal entity comprising two or more individual consortium members applying for a license pursuant to this provision shall be the applicant for purposes of all related requirements and filings, such as filing FCC Form 602. However, the members filing separate long-form applications shall all use the consortium's FCC Registration Number (''FRN'') on their long-form applications. An application by an individual consortium member or a new legal entity comprising two or more individual consortium members for a license covered by the winning bids of the consortium shall not constitute a major modification of the application or a change in control of the applicant for purposes of Commission rules governing the application.

(ii) Within ten business days after release of the public notice announcing grant of a long-form application, that licensee must update its filings in the Commission's Universal Licensing System (''ULS'') to substitute its individual FRN for that of the consortium.

(2) The continuing eligibility for size-based benefits, such as size-based bidding credits or set-aside licenses, of a newly formed legal entity comprising two or more individual consortium members will be based on the size of such newly formed entity as of the filing of its long-form application.

(3) Members of a consortium intending to partition or disaggregate license(s) among individual members or new legal entities comprising two or more individual consortium members must select one member or one new legal entity comprising two or more individual consortium members to apply for the license(s). The applicant must include in its applications, as part of the explanation of terms and conditions provided pursuant to §1.2107(d), the agreement of the applicable parties to partition or disaggregate the relevant license(s). Upon grant of the long-form application for that license, the licensee must then apply to partition or disaggregate the license pursuant to those terms and conditions.

[59 FR 44293, Aug. 26, 1994, as amended at 61 FR 49075, Sept. 18, 1996; 62 FR 13543, Mar. 21, 1997; 63 FR 2342, Jan. 15, 1998; 63 FR 12659, Mar. 16, 1998; 63 FR 68942, Dec. 14, 1998; 65 FR 47354, Aug. 2, 2000; 67 FR 45365, July 9, 2002; 71 FR 6227, Feb. 7, 2006; 76 FR 37661, June 28, 2011; 80 FR 56813, Sept. 18, 2015]

§ 1.2108 Procedures for filing petitions to deny against long-form applications.

(a) Where petitions to deny are otherwise provided for under the Act or the commission's Rules, and unless other service-specific procedures for the filing of such petitions are provided for elsewhere in the Commission's Rules, the procedures in this section shall apply to the filing of petitions to deny the long-form applications of winning bidders.

(b) Within a period specified by Public Notice and after the Commission by Public Notice announces that long-form applications have been accepted for filing, petitions to deny such applications may be filed. The period for filing petitions to deny shall be no more than ten (10) days. The appropriate licensing Bureau, within its discretion, may, in exigent circumstances, reduce this period of time to no less than five (5) days. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The time for filing such oppositions shall be at least five (5) days from the filing date for petitions to deny, and the time for filing replies shall be at least five (5) days from the filing date for oppositions. The Commission may grant a license based on any long-form application that has been accepted for filing. The Commission shall in no case grant licenses earlier than seven (7) days following issuance of a public notice announcing long-form applications have been accepted for filing.

(d) If the Commission determines that:

(1) An applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application.

(2) An applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold an evidentiary hearing and will deny the application.

(3) Substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

[59 FR 44293, Aug. 26, 1994, as amended at 63 FR 2343, Jan. 15, 1998; 65 FR 52345, Aug. 29, 2000]

§ 1.2109 License grant, denial, default, and disqualification.

(a) Unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following the release of a public notice establishing the payment deadline. If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount due. When a winning bidder fails to pay the balance of its winning bid by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of winning bids and any applicable late fees.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in §§ 1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission, at its discretion, may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. If the license(s) is offered to the other highest bidders (in descending order), the down payment

obligations set forth in § 1.2107(b) will apply. However, in combinatorial bidding auctions, the Commission will only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in §§ 1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. However, in combinatorial bidding auctions, the Commission will only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

[59 FR 44293, Aug. 26, 1994, as amended at 62 FR 13544, Mar. 21, 1997; 63 FR 2343, Jan. 15, 1998; 68 FR 42996, July 21, 2003]

§ 1.2110 Designated entities.

(a) Designated entities are small businesses (including businesses owned by members of minority groups and/or women), rural telephone companies, and eligible rural service providers.

(b) *Eligibility for small business and entrepreneur provisions*— (1) *Size attribution*. (i) The gross revenues of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. An applicant seeking status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules, must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous three years of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests.

(ii) If applicable, pursuant to § 24.709 of this chapter, the total assets of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous two years of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests.

(2) *Aggregation of affiliate interests*. Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(c)(5)(iii) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

Example 1 to paragraph (b)(2): ABC Corp. is owned by individuals, A, B and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A&B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person or entity.

Example 2 to paragraph (b)(2): ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be

aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(3) *Standard for evaluating eligibility for small business benefits.* To be eligible for small business benefits:

(i) An applicant must meet the applicable small business size standard in paragraphs (b)(1) and (2) of this section, and

(ii) Must retain *de jure* and *de facto* control over the spectrum associated with the license(s) for which it seeks small business benefits. An applicant or licensee may lose eligibility for size-based benefits for one or more licenses without losing general eligibility for size-based benefits so long as it retains *de jure* and *de facto* control of its overall business.

(4) *Exceptions*—(i) *Consortium.* Where an applicant to participate in bidding for Commission licenses or permits is a consortium of entities eligible for size-based bidding credits and/or closed bidding based on gross revenues and/or total assets, the gross revenues and/or total assets of each consortium member shall not be aggregated. Where an applicant to participate in bidding for Commission licenses or permits is a consortium of entities eligible for rural service provider bidding credits pursuant to paragraph (f)(4) of this section, the subscribers of each consortium member shall not be aggregated. Each consortium member must constitute a separate and distinct legal entity to qualify for this exception. Consortia that are winning bidders using this exception must comply with the requirements of §1.2107(g) of this chapter as a condition of license grant.

(ii) Applicants without identifiable controlling interests. Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(iii) *Rural telephone cooperatives.* (A)(*1*) An applicant will be exempt from §1.2110(c)(2)(ii)(F) for the purpose of attribution in §1.2110(b)(1), if the applicant or a controlling interest in the applicant, as the case may be, meets all of the following conditions:

(*i*) The applicant (or the controlling interest) is organized as a cooperative pursuant to state law;

(*ii*) The applicant (or the controlling interest) is a ''rural telephone company'' as defined by the Communications Act; and

(*iii*) The applicant (or the controlling interest) demonstrates either that it is eligible for tax-exempt status under the Internal Revenue Code or that it adheres to the cooperative principles articulated in *Puget Sound Plywood, Inc.* v. *Commissioner of Internal Revenue,* 44 T.C. 305 (1965).

(*2*) If the condition in paragraph (b)(3)(iii)(A)(*1*)(*i*) above cannot be met because the relevant jurisdiction has not enacted an organic statute that specifies requirements for organization as a cooperative, the applicant must show that it is validly organized and its articles of incorporation, by-laws, and/or other relevant organic documents provide that it operates pursuant to cooperative principles.

(B) However, if the applicant is not an eligible rural telephone cooperative under paragraph (a) of this section, and the applicant has a controlling interest other than the applicant's officers and directors or an eligible rural telephone cooperative's officers and directors, paragraph (a) of this section applies with respect to the applicant's officers and directors and such controlling interest's officers and directors only when such controlling interest is either:

(*1*) An eligible rural telephone cooperative under paragraph (a) of this section or

(*2*) controlled by an eligible rural telephone cooperative under paragraph (a) of this section.

(c) *Definitions*—(1) *Small businesses.* The Commission will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.

(2) *Controlling interests.* (i) For purposes of this section, controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50

percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(A) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(B) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(C) The entity plays an integral role in management decisions.

(ii) *Calculation of certain interests.* (A) *Fully diluted requirement.* (*1*) Except as set forth in paragraph (c)(2)(ii)(A)(*2*) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(*2*) Rights of first refusal and put options shall not be calculated on a fully diluted basis for purposes of determining *de jure* control; however, rights of first refusal and put options shall be calculated on a fully diluted basis if such ownership interests, in combination with other terms to an agreement, deprive an otherwise qualified applicant or licensee of *de facto* control.

NOTE TO PARAGRAPH (c)(2)(ii)(A): Mutually exclusive contingent ownership interests, *i.e.*, one or more ownership interests that, by their terms, are mutually exclusive of one or more other ownership interests, shall be calculated as having been fully exercised only in the possible combinations in which they can be exercised by their holder(s). A contingent ownership interest is mutually exclusive of another only if contractual language specifies that both interests cannot be held simultaneously as present ownership interests.

(B) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified.

(C) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(D) Non-voting stock shall be attributed as an interest in the issuing entity.

(E) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(F) Officers and directors of the applicant shall be considered to have a controlling interest in the applicant. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant. The personal net worth, including personal income of the officers and directors of an applicant, is not attributed to the applicant. To the extent that the officers and directors of an applicant are affiliates of other entities, the gross revenues of the other entities are attributed to the applicant.

(G) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(H) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(*1*) The nature or types of services offered by such an applicant or licensee;

(*2*) The terms upon which such services are offered; or

(*3*) The prices charged for such services.

(I) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(*1*) The nature or types of services offered by such an applicant or licensee;

(*2*) The terms upon which such services are offered; or

(*3*) The prices charged for such services.

(J) In addition to the provisions of paragraphs (b)(1)(i) and (f)(4)(i)(C) of this section, for purposes of determining an applicant's or licensee's eligibility for bidding credits for designated entity benefits, the gross revenues (or, in the case of a rural service provider under paragraph (f)(4) of this section, the subscribers) of any disclosable interest holder of an applicant or licensee are also attributable to the applicant or licensee, on a license-by-license basis, if the disclosable interest holder uses, or has an agreement to use, more than 25 percent of the spectrum capacity of a license awarded with bidding credits. For purposes of this provision, a disclosable interest holder in a designated entity applicant or licensee is defined as any individual or entity holding a ten percent or greater interest of any kind in the designated entity, including but not limited to, a ten percent or greater interest in any class of stock, warrants, options or debt securities in the applicant or licensee. This rule, however, shall not cause a disclosable interest holder, which is not otherwise a controlling interest, affiliate, or an affiliate of a controlling interest of a rural service provider to have the disclosable interest holder's subscribers become attributable to the rural service provider applicant or licensee when the disclosable interest holder has a spectrum use agreement to use more than 25 percent of the spectrum capacity of a license awarded with a rural service provider bidding credit, so long as

(1) The disclosable interest holder is independently eligible for a rural service provider bidding credit, and;

(2) The disclosable interest holder's spectrum use and any spectrum use agreements are otherwise permissible under the Commission's rules.

(3) *Businesses owned by members of minority groups and/or women.* Unless otherwise provided in rules governing specific services, a business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least greater than 50 percent equity ownership and, in the case of a corporate applicant, have a greater than 50 percent voting interest. For applicants that are partnerships, every general partner must be either a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of Black or African American, Hispanic or Latino, American Indian or Alaskan Native, Asian, and Native Hawaiian or Pacific Islander extraction.

(4) *Rural telephone companies.* A rural telephone company is any local exchange carrier operating entity to the extent that such entity—

(i) Provides common carrier service to any local exchange carrier study area that does not include either:

(A) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census, or

(B) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(ii) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(iii) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(iv) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(5) *Affiliate.* (i) An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity—

(A) Directly or indirectly controls or has the power to control the applicant, or

(B) Is directly or indirectly controlled by the applicant, or

(C) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(D) Has an ''identity of interest'' with the applicant.

(ii) Nature of control in determining affiliation.

(A) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(B) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(C) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(iii) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

Example. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(A) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation

recognized by a court of competent jurisdiction in the United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(B) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context ''immediate family member'' means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that the family members are estranged, the family ties are remote, or the family members are not closely involved with each other in business matters.

Example. A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation Y is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(iv) *Affiliation through stock ownership.* (A) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(B) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(C) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(v) Affiliation arising under stock options, convertible debentures, and agreements to merge. Except as set forth in paragraph (c)(2)(ii)(A)(*2*) of this section, stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 to paragraph (c)(5)(v). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2. If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3. If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

NOTE TO PARAGRAPH (c)(5)(v): Mutually exclusive contingent ownership interests, *i.e.*, one or more ownership interests that, by their terms, are mutually exclusive of one or more other ownership interests, shall be calculated as having been fully exercised only in the possible combinations in which they can be exercised by their holder(s). A contingent ownership interest is mutually exclusive of another only if contractual language specifies that both interests cannot be held simultaneously as present ownership interests.

(vi) *Affiliation under voting trusts.* (A) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(B) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(C) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(vii) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(viii) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(ix) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(x) *Affiliation under joint venture arrangements.* (A) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(B) The parties to a joint venture are considered to be affiliated with each other. Nothing in this subsection shall be construed to define a small business consortium, for purposes of determining status as a designated entity, as a joint venture under attribution standards provided in this section.

(xi) *Exclusion from affiliation coverage.* For purposes of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of this section, except that gross revenues derived from gaming activities conducted by affiliate entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

(6) *Consortium.* A consortium of small businesses, very small businesses, entrepreneurs, or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business, very small business, entrepreneur, or rural service provider as those terms are defined in

this section and in applicable service-specific rules. Each individual member must constitute a separate and distinct legal entity to qualify.

(d) The Commission may set aside specific licenses for which only eligible designated entities, as specified by the Commission, may bid.

(e) The Commission may permit partitioning of service areas in particular services for eligible designated entities.

(f) *Bidding credits.* (1) The Commission may award bidding credits (*i.e.*, payment discounts) to eligible designated entities. Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures.

(2) *Small business bidding credits.*—(i) *Size of bidding credits.* A winning bidder that qualifies as a small business, and has not claimed a rural service provider bidding credit pursuant to paragraph (f)(4) of this section, may use the following bidding credits corresponding to its respective average gross revenues for the preceding 3 years:

(A) Businesses with average gross revenues for the preceding 3 years not exceeding $4 million are eligible for bidding credits of 35 percent;

(B) Businesses with average gross revenues for the preceding 3 years not exceeding $20 million are eligible for bidding credits of 25 percent; and

(C) Businesses with average gross revenues for the preceding 3 years not exceeding $55 million are eligible for bidding credits of 15 percent.

(ii) *Cap on winning bid discount.* A maximum total discount that a winning bidder that is eligible for a small business bidding credit may receive will be established on an auction-by-auction basis. The limit on the discount that a winning bidder that is eligible for a small business bidding credit may receive in any particular auction will be no less than $25 million. The Commission may adopt a market-based cap on an auction-by-auction basis that would establish an overall limit on the discount that a small business may receive for certain license areas.

(3) *Bidding credit for serving qualifying tribal land.* A winning bidder for a market will be eligible to receive a bidding credit for serving a qualifying tribal land within that market, provided that it complies with §1.2107(e). The following definition, terms, and conditions shall apply for the purposes of this section and §1.2107(e):

(i) Qualifying tribal land means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments, that has a wireline telephone subscription rate equal to or less than eighty-five (85) percent based on the most recently available U.S. Census Data.

(ii) *Certification.* (A) Within 180 days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and attach a certification from the tribal government stating the following:

(*1*) The tribal government authorizes the winning bidder to site facilities and provide service on its tribal land;

(*2*) The tribal area to be served by the winning bidder constitutes qualifying tribal land; and

(*3*) The tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land.

(B) In addition, within 180 days after the filing deadline for long-form applications, the winning bidder must amend its long-form application and file a certification that it will comply with the construction requirements set forth in paragraph (f)(3)(vii) of this section and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land.

(C) If the winning bidder fails to submit the required certifications within the 180-day period, the bidding credit will not be awarded, and the winning bidder must pay any outstanding balance on its winning bid amount.

(iii) *Bidding credit formula.* Subject to the applicable bidding credit limit set

forth in §1.2110(f)(3)(iv), the bidding credit shall equal five hundred thousand (500,000) dollars for the first two hundred (200) square miles (518 square kilometers) of qualifying tribal land, and twenty-five hundred (2500) dollars for each additional square mile (2.590 square kilometers) of qualifying tribal land above two hundred (200) square miles (518 square kilometers).

(iv) *Bidding credit limit.* If the high bid is equal to or less than one million (1,000,000) dollars, the maximum bidding credit calculated pursuant to §1.2110(f)(3)(iii) shall not exceed fifty (50) percent of the high bid. If the high bid is greater than one million (1,000,000) dollars, but equal to or less than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to §1.2110(f)(3)(iii) shall not exceed five hundred thousand (500,000) dollars. If the high bid is greater than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to §1.2110(f)(3)(iii) shall not exceed thirty-five (35) percent of the high bid.

(v) *Bidding credit limit in auctions subject to specified reserve price(s).* In any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2) with reserve price(s) and in any auction with reserve price(s) in which the Commission specifies that this provision shall apply, the aggregate amount available to be awarded as bidding credits for serving qualifying tribal land with respect to all licenses subject to a reserve price shall not exceed the amount by which winning bids for those licenses net of discounts the Commission takes into account when reporting net bids in the Public Notice closing the auction exceed the applicable reserve price. If the total amount that might be awarded as tribal land bidding credits based on applications for all licenses subject to the reserve price exceeds the aggregate amount available to be awarded, the Commission will award eligible applicants a pro rata tribal land bidding credit. The Commission may determine at any time that the total amount that might be awarded as tribal land bidding credits is less than the aggregate amount available to be awarded and grant full tribal land bidding credits to relevant applicants, including any that previously received pro rata tribal land bidding credits. To determine the amount of an applicant's pro rata tribal land bidding credit, the Commission will multiply the full amount of the tribal land bidding credit for which the applicant would be eligible excepting this limitation ((f)(3)(v)) of this section by a fraction, consisting of a numerator in the amount by which winning bids for licenses subject to the reserve price net of discounts the Commission takes into account when reporting net bids in the Public Notice closing the auction exceed the reserve price and a denominator in the amount of the aggregate maximum tribal land bidding credits for which applicants for such licenses might have qualified excepting this limitation ((f)(3)(v)) of this section. When determining the aggregate maximum tribal land bidding credits for which applicants for such licenses might have qualified, the Commission shall assume that any applicant seeking a tribal land bidding credit on its long-form application will be eligible for the largest tribal land bidding credit possible for its bid for its license excepting this limitation ((f)(3)(v)) of this section. After all applications seeking a tribal land bidding credit with respect to licenses covered by a reserve price have been finally resolved, the Commission will recalculate the pro rata credit. For these purposes, final determination of a credit occurs only after any review or reconsideration of the award of such credit has been concluded and no opportunity remains for further review or reconsideration. To recalculate an applicant's pro rata tribal land bidding credit, the Commission will multiply the full amount of the tribal land bidding credit for which the applicant would be eligible excepting this limitation ((f)(3)(v)) of this section by a fraction, consisting of a numerator in the amount by which winning bids for licenses subject to the reserve price net of discounts the Commission takes into account when reporting net bids in the Public Notice closing the auction exceed the reserve price and a denominator in the amount of the aggregate amount of tribal land

bidding credits for which all applicants for such licenses would have qualified excepting this limitation ((f)(3)(v)) of this section.

(vi) *Application of credit.* A pending request for a bidding credit for serving qualifying tribal land has no effect on a bidder's obligations to make any auction payments, including down and final payments on winning bids, prior to award of the bidding credit by the Commission. Tribal land bidding credits will be calculated and awarded prior to license grant. If the Commission grants an applicant a pro rata tribal land bidding credit prior to license grant, as provided by paragraph (f)(3)(v) of this section, the Commission shall recalculate the applicant's pro rata tribal land bidding credit after all applications seeking tribal land biddings for licenses subject to the same reserve price have been finally resolved. If a recalculated tribal land bidding credit is larger than the previously awarded pro rata tribal land bidding credit, the Commission will award the difference.

(vii) *Post-construction certification.* Within fifteen (15) days of the third anniversary of the initial grant of its license, a recipient of a bidding credit under this section shall file a certification that the recipient has constructed and is operating a system capable of serving seventy-five (75) percent of the population of the qualifying tribal land for which the credit was awarded. The recipient must provide the total population of the tribal area covered by its license as well as the number of persons that it is serving in the tribal area.

(viii) *Performance penalties.* If a recipient of a bidding credit under this section fails to provide the post-construction certification required by paragraph (f)(3)(vii) of this section, then it shall repay the bidding credit amount in its entirety, plus interest. The interest will be based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted. Such payment shall be made within thirty (30) days of the third anniversary of the initial grant of its license. Failure to repay the bidding credit amount and interest within the required time period will result in automatic termination of the license without specific Commission action. Repayment of bidding credit amounts pursuant to this provision shall not affect the calculation of amounts available to be awarded as tribal land bidding credits pursuant to (f)(3)(v) of this section.

(4) *Rural service provider bidding credit*—(i) *Eligibility.* A winning bidder that qualifies as a rural service provider and has not claimed a small business bidding credit pursuant to paragraph (f)(2) of this section will be eligible to receive a 15 percent bidding credit. For the purposes of this paragraph, a rural service provider means a service provider that—

(A) Is in the business of providing commercial communications services and together with its controlling interests, affiliates, and the affiliates of its controlling interests as those terms are defined in paragraphs (c)(2) and (c)(5) of this section, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers as of the date of the short-form filing deadline; and

(B) Serves predominantly rural areas, defined as counties with a population density of 100 or fewer persons per square mile.

(C) *Size attribution. (1)* The combined wireless, wireline, broadband, and cable subscribers of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for the rural service provider bidding credit.

(2) Exception. For rural partnerships providing service as of July 16, 2015, the Commission will determine eligibility for the 15 percent rural service provider bidding credit by evaluating whether the individual members of the rural partnership individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers, and for those types of rural partnerships, the subscribers will not be aggregated.

(ii) *Cap on winning bid discount.* A maximum total discount that a winning bidder that is eligible for a rural service provider bidding credit may receive will be established on an auction-by-auction basis. The limit on the discount that a winning bidder that is eligible for a rural service provider bidding credit may receive in any particular auction will be no less than $10 million. The Commission may adopt a market-based cap on an auction-by-auction basis that would establish an overall limit on the discount that a rural service provider may receive for certain license areas.

(g) *Installment payments.* The Commission may permit small businesses (including small businesses owned by women, minorities, or rural telephone companies that qualify as small businesses) and other entities determined to be eligible on a service-specific basis, which are high bidders for licenses specified by the Commission, to pay the full amount of their high bids in installments over the term of their licenses pursuant to the following:

(1) Unless otherwise specified by public notice, each eligible applicant paying for its license(s) on an installment basis must deposit by wire transfer in the manner specified in §1.2107(b) sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within ten (10) days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable to pay a default payment pursuant to §1.2104(g)(2).

(2) Within ten (10) days of the conditional grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. If a winning bidder eligible for installment payments fails to submit this additional ten (10) percent of its high bid by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount due. When a winning bidder eligible for installment payments fails to submit this additional ten (10) percent of its winning bid, plus the late fee, by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of second down payments and any applicable late fees.

(3) Upon grant of the license, the Commission will notify each eligible licensee of the terms of its installment payment plan and that it must execute a promissory note and security agreement as a condition of the installment payment plan. Unless other terms are specified in the rules of particular services, such plans will:

(i) Impose interest based on the rate of U.S. Treasury obligations (with maturities closest to the duration of the license term) at the time of licensing;

(ii) Allow installment payments for the full license term;

(iii) Begin with interest-only payments for the first two years; and

(iv) Amortize principal and interest over the remaining term of the license.

(4) A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan.

(i) Any licensee that fails to submit its quarterly payment on an installment payment obligation (the ''Required Installment Payment'') may submit such payment on or before the last day of the next quarter (the ''first additional quarter'') without being considered delinquent. Any licensee making its Required Installment Payment during this period (the ''first additional quarter grace period'') will be assessed a late payment fee equal to five percent (5%) of the amount of the past due Required Installment Payment. The late payment fee applies to the total Required Installment Payment regardless of whether the licensee submitted a portion of its Required Installment Payment in a timely manner.

(ii) If any licensee fails to make the Required Installment Payment on or before the last day of the first additional quarter set forth in paragraph

(g)(4)(i) of this section, the licensee may submit its Required Installment Payment on or before the last day of the next quarter (the ''second additional quarter''), except that no such additional time will be provided for the July 31, 1998 suspension interest and installment payments from C or F block licensees that are not made within 90 days of the payment resumption date for those licensees, as explained in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, *Order on Reconsideration of the Second Report and Order,* WT Docket No. 97–82, 13 FCC Rcd 8345 (1998). Any licensee making the Required Installment Payment during the second additional quarter (the ''second additional quarter grace period'') will be assessed a late payment fee equal to ten percent (10%) of the amount of the past due Required Installment Payment. Licensees shall not be required to submit any form of request in order to take advantage of the first and second additional quarter grace periods.

(iii) All licensees that avail themselves of these grace periods must pay the associated late payment fee(s) and the Required Installment Payment prior to the conclusion of the applicable additional quarter grace period(s). Payments made at the close of any grace period(s) will first be applied to satisfy any lender advances as required under each licensee's ''Note and Security Agreement,'' with the remainder of such payments applied in the following order: late payment fees, interest charges, installment payments for the most back-due quarterly installment payment.

(iv) If an eligible entity obligated to make installment payments fails to pay the total Required Installment Payment, interest and any late payment fees associated with the Required Installment Payment within two quarters (6 months) of the Required Installment Payment due date, it shall be in default, its license shall automatically cancel, and it will be subject to debt collection procedures. A licensee in the PCS C or F blocks shall be in default, its license shall automatically cancel, and it will be subject to debt collection procedures, if the payment due on the payment resumption date, referenced in paragraph (g)(4)(ii) of this section, is more than ninety (90) days delinquent.

(h) The Commission may establish different upfront payment requirements for categories of designated entities in competitive bidding rules of particular auctionable services.

(i) The Commission may offer designated entities a combination of the available preferences or additional preferences.

(j) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, spectrum use agreements, and all other agreements including oral agreements, establishing as applicable, *de facto* or *de jure* control of the entity. Designated entities also must provide the date(s) on which they entered into each of the agreements listed. In addition, designated entities must file with their long-form applications a copy of each such agreement. In order to enable the Commission to audit designated entity eligibility on an ongoing basis, designated entities that are awarded eligibility must, for the term of the license, maintain at their facilities or with their designated agents the lists, summaries, dates and copies of agreements required to be identified and provided to the Commission pursuant to this paragraph and to § 1.2114.

(k) The Commission may, on a service-specific basis, permit consortia, each member of which individually meets the eligibility requirements, to qualify for any designated entity provisions.

(l) The Commission may, on a service-specific basis, permit publicly-traded companies that are owned by members of minority groups or women to qualify for any designated entity provisions.

(m) *Audits.* (1) Applicants and licensees claiming eligibility shall be subject to audits by the Commission, using in-

house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding FCC-licensed service and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

(n) *Annual reports.* (1) Each designated entity licensee must file with the Commission an annual report no later than September 30 of each year for each license it holds that was acquired using designated entity benefits and that, as of August 31 of the year in which the report is due (the ''cut-off date''), remains subject to designated entity unjust enrichment requirements (a ''designated entity license''). The annual report must provide the information described in paragraph (n)(2) of this section for the year ending on the cut-off date (the ''reporting year''). If, during the reporting year, a designated entity has assigned or transferred a designated entity license to another designated entity, the designated entity that holds the designated entity license on September 30 of the year in which the application for the transaction is filed is responsible for filing the annual report.

(2) The annual report shall include, at a minimum, a list and summaries of all agreements and arrangements (including proposed agreements and arrangements) that relate to eligibility for designated entity benefits. In addition to a summary of each agreement or arrangement, this list must include the parties (including affiliates, controlling interests, and affiliates of controlling interests) to each agreement or arrangement, as well as the dates on which the parties entered into each agreement or arrangement.

(3) A designated entity need not list and summarize on its annual report the agreements and arrangements otherwise required to be included under paragraphs (n)(1) and (n)(2) of this section if it has already filed that information with the Commission, and the information on file remains current. In such a situation, the designated entity must instead include in its annual report both the ULS file number of the report or application containing the current information and the date on which that information was filed.

(o) *Gross revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form (FCC Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent and must be prepared in accordance with Generally Accepted Accounting Principles.

(p) *Total assets.* Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recently audited financial statements

or certified by the applicant's chief financial offer or its equivalent if the applicant does not otherwise use audited financial statements.

[63 FR 2343, Jan. 15, 1998; 63 FR 12659, Mar. 16, 1998, as amended at 63 FR 17122, Apr. 8, 1998; 65 FR 47355, Aug. 2, 2000; 65 FR 52345, Aug. 29, 2000; 65 FR 68924, Nov. 15, 2000; 67 FR 16650, Apr. 8, 2002; 67 FR 45365, July 9, 2002; 68 FR 23422, May 2, 2003; 68 FR 42996, July 21, 2003; 69 FR 61321, Oct. 18, 2004; 70 FR 57187, Sept. 30, 2005; 71 FR 6227, Feb. 7, 2006; 71 FR 26251, May 4, 2006; 77 FR 16470, Mar. 21, 2012; 80 FR 56813, Sept. 18, 2015]

§ 1.2111 Assignment or transfer of control: unjust enrichment.

(a) *Unjust enrichment payment: installment financing.* (1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. A licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments, debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.

(3) If a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan under this section, the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status. A licensee may not switch its payment plan to a more favorable plan.

(b) *Unjust enrichment payment: bidding credits.* (1) A licensee that utilizes a bidding credit, and that during the initial term seeks to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a bidding credit, will be required to reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license was granted, as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to make any ownership change that would result in the licensee losing eligibility for a bidding credit (or qualifying for a lower bidding credit), the amount of the bidding credit (or the difference between the bidding credit originally obtained and the bidding credit for which the licensee would qualify after restructuring), plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer or of a reportable eligibility event (*see* § 1.2114).

(2) *Payment schedule.* (i) The amount of payments made pursuant to paragraph (d)(1) of this section will be reduced over time as follows:

(A) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or in the case of very small businesses transferring to

small businesses, 100 percent of the difference between the bidding credit received by the former and the bidding credit for which the latter is eligible);

(B) A transfer in year 3 of the license term will result in a forfeiture of 75 percent of the value of the bidding credit;

(C) A transfer in year 4 of the license term will result in a forfeiture of 50 percent of the value of the bidding credit;

(D) A transfer in year 5 of the license term will result in a forfeiture of 25 percent of the value of the bidding credit; and

(E) For a transfer in year 6 or thereafter, there will be no payment.

(ii) These payments will have to be paid to the United States Treasury as a condition of approval of the assignment, transfer, ownership change or reportable eligibility event (see § 1.2114).

(c) *Unjust enrichment: partitioning and disaggregation*—(1) *Installment payments.* Licensees making installment payments, that partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for installment payments, will be subject to the provisions concerning unjust enrichment as set forth in this section.

(2) *Bidding credits.* Licensees that received a bidding credit that partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in this section.

(3) *Apportioning unjust enrichment payments.* Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the licensee.

[59 FR 44293, Aug. 26, 1994, as amended at 63 FR 2346, Jan. 15, 1998; 63 FR 68942, Dec. 14, 1998; 71 FR 26252, May 4, 2006; 71 FR 34278, June 14, 2006; 77 FR 16471, Mar. 21, 2012; 80 FR 56814, Sept. 18, 2015]

§ 1.2112 Ownership disclosure requirements for applications.

(a) Each application to participate in competitive bidding (*i.e.*, short-form application (*see* 47 CFR 1.2105)), or for a license, authorization, assignment, or transfer of control shall fully disclose the following:

(1) List the real party or parties in interest in the applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

(2) List the name, address, and citizenship of any party holding 10 percent or more of stock in the applicant, whether voting or nonvoting, common or preferred, including the specific amount of the interest or percentage held;

(3) List, in the case of a limited partnership, the name, address and citizenship of each limited partner whose interest in the applicant is 10 percent or greater (as calculated according to the percentage of equity paid in or the percentage of distribution of profits and losses);

(4) List, in the case of a general partnership, the name, address and citizenship of each partner, and the share or interest participation in the partnership;

(5) List, in the case of a limited liability company, the name, address, and citizenship of each of its members whose interest in the applicant is 10 percent or greater;

(6) List all parties holding indirect ownership interests in the applicant as determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain, that equals 10 percent or more of the applicant, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated and reported as if it were a 100 percent interest; and

(7) List any FCC-regulated entity or applicant for an FCC license, in which the applicant or any of the parties identified in paragraphs (a)(1) through (a)(5) of this section, owns 10 percent or more of stock, whether voting or nonvoting, common or preferred. This list

must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant (e.g., Company A owns 10 percent of Company B (the applicant) and 10 percent of Company C, then Companies A and C must be listed on Company B's application, where C is an FCC licensee and/or license applicant).

(b) *Designated entity status.* In addition to the information required under paragraph (a) of this section, each applicant claiming eligibility for small business provisions or a rural service provider bidding credit shall disclose the following:

(1) On its application to participate in competitive bidding (*i.e.,* short-form application (*see* 47 CFR 1.2105)):

(i) List the names, addresses, and citizenship of all officers, directors, affiliates, and other controlling interests of the applicant, as described in § 1.2110, and, if a consortium of small businesses or consortium of very small businesses, the members of the conglomerate organization;

(ii) List any FCC-regulated entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant;

(iii) List all parties with which the applicant has entered into agreements or arrangements for the use of any of the spectrum capacity of any of the applicant's spectrum;

(iv) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: The applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium;

(v) If claiming eligibility for a rural service provider bidding credit, provide all information to demonstrate that the applicant meets the criteria for such credit as set forth in § 1.2110(f)(4); and

(vi) If applying as a consortium of designated entities, provide the information in paragraphs (b)(1)(i) through (v) of this section separately for each member of the consortium.

(2) As an exhibit to its application for a license, authorization, assignment, or transfer of control:

(i) List the names, addresses, and citizenship of all officers, directors, and other controlling interests of the applicant, as described in § 1.2110;

(ii) List any FCC-regulated entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant;

(iii) List and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under the applicable designated entity provisions, including the establishment of *de facto* or *de jure* control. Such agreements and instruments include articles of incorporation and by-laws, partnership agreements, shareholder agreements, voting or other trust agreements, management agreements, franchise agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, and any other relevant agreements (including letters of intent), oral or written;

(iv) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees;

(v) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium;

(vi) List and summarize, if seeking the exemption for rural telephone cooperatives pursuant to § 1.2110, all documentation to establish eligibility pursuant to the factors listed under § 1.2110(b)(4)(iii)(A).

(vii) List and summarize any agreements in which the applicant has entered into arrangements for the use of any of the spectrum capacity of the license that is the subject of the application; and

(viii) If claiming eligibility for a rural service provider bidding credit, provide all information to demonstrate that the applicant meets the criteria for such credit as set forth in § 1.2110(f)(4).

[68 FR 42997, July 21, 2003, as amended at 70 FR 57187, Sept. 30, 2005; 71 FR 26253, May 4, 2006; 77 FR 16471, Mar. 21, 2012; 80 FR 56815, Sept. 18, 2015]

§ 1.2113 Construction prior to grant of application.

Subject to the provisions of this section, applicants for licenses awarded by competitive bidding may construct facilities to provide service prior to grant of their applications, but must not operate such facilities until the FCC grants an authorization. If the conditions stated in this section are not met, applicants must not begin to construct facilities for licenses subject to competitive bidding.

(a) *When applicants may begin construction.* An applicant may begin construction of a facility upon release of the Public Notice listing the post-auction long-form application for that facility as acceptable for filing.

(b) *Notification to stop.* If the FCC 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 FCC rules and orders.

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

(1) The application does not include a request for a waiver of one or more FCC rules;

(2) 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 FCC, PRB, Support Services Branch, Gettysburg, PA 17325;

(3) 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;

(4) Under applicable international agreements and rules in this part, individual coordination of the proposed channel assignment(s) with a foreign administration is not required; and

(5) Any service-specific restrictions not listed herein.

[63 FR 2348, Jan. 15, 1998]

§ 1.2114 Reporting of eligibility event.

(a) A designated entity must seek Commission approval for all reportable eligibility events. A reportable eligibility event is:

(1) Any spectrum lease (as defined in § 1.9003) or any other type of spectrum use agreement with one entity or on a cumulative basis that might cause a licensee to lose eligibility for installment payments, a set-aside license, or a bidding credit (or for a particular level of bidding credit) under § 1.2110 and applicable service-specific rules.

(2) Any other event that would lead to a change in the eligibility of a licensee for designated entity benefits.

(b) *Documents listed on and filed with application.* A designated entity filing

an application pursuant to this section must—

(1) List and summarize on the application all agreements and arrangements (including proposed agreements and arrangements) that give rise to or otherwise relate to a reportable eligibility event. In addition to a summary of each agreement or arrangement, this list must include the parties (including each party's affiliates, its controlling interests, the affiliates of its controlling interests, its spectrum lessees, and its spectrum resellers and wholesalers) to each agreement or arrangement, as well as the dates on which the parties entered into each agreement or arrangement.

(2) File with the application a copy of each agreement and arrangement listed pursuant to this paragraph.

(3) Maintain at its facilities or with its designated agents, for the term of the license, the lists, summaries, dates, and copies of agreements and arrangements required to be provided to the Commission pursuant to this section.

(c) *Application fees*. The application reporting the eligibility event will be treated as a transfer of control for purposes of determining the applicable application fees as set forth in § 1.1102.

(d) *Streamlined approval procedures*. (1) The eligibility event application will be placed on public notice once the application is sufficiently complete and accepted for filing (see § 1.933).

(2) Petitions to deny filed in accordance with section 309(d) of the Communications Act must comply with the provisions of § 1.939, except that such petitions must be filed no later than 14 days following the date of the Public Notice listing the application as accepted for filing.

(3) No later than 21 days following the date of the Public Notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will grant the application, deny the application, or remove the application from streamlined processing for further review.

(4) Grant of the application will be reflected in a Public Notice (see § 1.933(a)(2)) promptly issued after the grant.

(5) If the Bureau determines to remove an application from streamlined processing, it will issue a Public Notice indicating that the application has been removed from streamlined processing. Within 90 days of that Public Notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

(e) *Public notice of application*. Applications under this section will be placed on an informational public notice on a weekly basis (see § 1.933(a)).

(f) *Contents of the application*. The application must contain all information requested on the applicable form, any additional information and certifications required by the rules in this chapter, and any rules pertaining to the specific service for which the application is filed.

(g) The designated entity is required to update any change in a relationship that gave rise to a reportable eligibility event.

[71 FR 26253, May 4, 2006, as amended at 71 FR 34278, June 14, 2006; 79 FR 48530, Aug. 15, 2014; 80 FR 56816, Sept. 18, 2015]

EFFECTIVE DATE NOTE: At 80 FR 56816, Sept. 18, 2015, § 1.2114 (a)(1) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1.2115 Public notice of incentive auction related procedures.

The provisions of this subpart may be used to conduct an incentive auction pursuant to 47 U.S.C. 309(j)(8)(G), including either or both a reverse auction to determine the incentive payment a licensee would be willing to accept in exchange for relinquishing spectrum usage rights and a forward auction to assign flexible use licenses for any spectrum made available as the result of such relinquishments. The Commission shall provide public notice of any procedures necessary for the implementation of an incentive auction that are not otherwise provided for pursuant to the rules of this Subpart. The Commission may do so in one or more such public notices. The Commission's procedures may include, without limitation:

(a) *Spectrum usage rights relinquishment procedures*. The procedures pursuant to which a licensee may make an unconditional, irrevocable offer to relinquish spectrum usage rights in exchange for an incentive payment, including any terms the offer must include and procedures pursuant to which the Commission may accept such an offer.

(b) *Information required from a licensee*. (1) The procedures for a licensee to provide any identifying information and or certifications that the Commission may require from any licensee that seeks to relinquish spectrum usage rights in the incentive auction.

(2) The procedures for a licensee that is relinquishing spectrum usage rights to provide any financial information that the Commission may require to facilitate the disbursement of any incentive payment.

[84 FR 1630, Feb. 5, 2019]

BROADCAST TELEVISION SPECTRUM REVERSE AUCTION

SOURCE: 79 FR 48530, Aug. 15, 2014, unless otherwise noted.

§ 1.2200 Definitions.

For purposes of §§1.2200 through 1.2209:

(a) *Broadcast television licensee*. The term *broadcast television licensee* means the licensee of

(1) A full-power television station, or

(2) A low-power television station that has been accorded primary status as a Class A television licensee under § 73.6001(a) of this chapter.

(b) *Channel sharee*. The term *channel sharee* means a broadcast television licensee that relinquishes all spectrum usage rights with respect to a particular television channel in order to share a television channel with another broadcast television licensee.

(c) *Channel sharer*. The term *channel sharer* means a broadcast television licensee that shares its television channel with a channel sharee.

(d) *Channel sharing bid*. The term *channel sharing bid* means a bid to relinquish all spectrum usage rights with respect to a particular television channel in order to share a television channel with another broadcast television licensee by an applicant that submits an executed channel sharing agreement with its application.

(e) *Forward auction*. The term *forward auction* means the portion of an incentive auction of broadcast television spectrum described in section 6403(c) of the Spectrum Act.

(f) *High-VHF-to-low-VHF bid*. The term *high-VHF-to-low-VHF bid* means a bid to relinquish all spectrum usage rights with respect to a high very high frequency (''VHF'') television channel (channels 7 through 13) in return for receiving spectrum usage rights with respect to a low VHF television channel (channels 2 through 6).

(g) *License relinquishment bid*. The term *license relinquishment bid* means a bid to relinquish all spectrum usage rights with respect to a particular television channel without receiving in return any spectrum usage rights with respect to another television channel.

(h) *NCE station*. The term *NCE station* means a noncommercial educational television broadcast station as defined in § 73.621 of this chapter.

(i) *Reverse auction*. The term *reverse auction* means the portion of an incentive auction of broadcast television spectrum described in section 6403(a) of the Spectrum Act.

(j) *Reverse auction bid*. The term *reverse auction bid* includes a license relinquishment bid, a UHF-to-VHF bid, a high-VHF-to-low-VHF bid, a channel sharing bid, and any other reverse auction bids permitted.

(k) *Spectrum Act*. The term *Spectrum Act* means Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96).

(l) *UHF-to-VHF bid*. The term *UHF-to-VHF bid* means a bid to relinquish all spectrum usage rights with respect to an ultra-high frequency (''UHF'') television channel in return for receiving spectrum usage rights with respect to a high VHF television channel or a low VHF television channel.

[79 FR 48530, Aug. 15, 2014, as amended at 80 FR 67342, Nov. 2, 2015]

§ 1.2201 Purpose.

The provisions of §§1.2200 through 1.2209 implement section 6403 of the Spectrum Act, which requires the Commission to conduct a reverse auction to

determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights in order to make spectrum available for assignment through a system of competitive bidding under subparagraph (G) of section 309(j)(8) of the Communications Act of 1934, as added by section 6402 of the Spectrum Act.

§ 1.2202 Competitive bidding design options.

(a) *Public notice of competitive bidding design options.* Prior to conducting competitive bidding in the reverse auction, public notice shall be provided of the detailed procedures that may be used to implement auction design options.

(b) *Competitive bidding design options.* The public notice detailing competitive bidding procedures for the reverse auction may establish procedures for collecting bids, assigning winning bids, and determining payments, including without limitation:

(1) *Procedures for collecting bids.* (i) Procedures for collecting bids in a single round or in multiple rounds.

(ii) Procedures for collecting bids for multiple reverse auction bid options.

(iii) Procedures allowing for bids that specify a price for a reverse auction bid option, indicate demand at a specified price, or provide other information as specified by competitive bidding policies, rules, and procedures.

(iv) Procedures allowing for bids that are contingent on specified conditions, such as other bids being accepted.

(v) Procedures to collect bids in one or more stages, including procedures for transitions between stages.

(vi) Procedures for whether, when, and how bids may be modified during the auction.

(2) *Procedures for assigning winning bids.* (i) Procedures that take into account one or more factors in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors.

(ii) Procedures to evaluate the technical feasibility of assigning a winning bid.

(A) Procedures that utilize mathematical computer optimization software, such as integer programming, to evaluate bids and technical feasibility, or that utilize other decision routines, such as sequentially evaluating bids using a ranking based on specified factors.

(B) Procedures that combine computer optimization algorithms with other decision routines.

(iii) Procedures to incorporate public interest considerations into the process for assigning winning bids.

(3) *Procedures for determining payments.* (i) Procedures to determine the amount of any incentive payments made to winning bidders consistent with other auction design choices.

(ii) The amount of proceeds shared with a broadcast television licensee will not be less than the amount of the licensee's winning bid in the reverse auction.

§ 1.2203 Competitive bidding mechanisms.

(a) *Public notice of competitive bidding procedures.* Detailed competitive bidding procedures shall be established by public notice prior to the commencement of the reverse auction, including without limitation:

(1) *Sequencing.* The sequencing with which the reverse auction and the related forward auction assigning new spectrum licenses will occur.

(2) *Reserve price.* Reserve prices, either disclosed or undisclosed, so that higher bids for various reverse auction bid options would not win in the reverse auction. Reserve prices may apply individually, in combination, or in the aggregate.

(3) *Opening bids and bid increments.* Maximum or minimum opening bids, and by announcement before or during the reverse auction, maximum or minimum bid increments in dollar or percentage terms.

(4) *Activity rules.* Activity rules that require a minimum amount of bidding activity.

(b) *Binding obligation.* A bid is an unconditional, irrevocable offer by the bidder to fulfill the terms of the bid. The Commission accepts the offer by identifying the bid as winning. A bidder has a binding obligation to fulfill the terms of a winning bid. A winning bidder will relinquish spectrum usage

rights pursuant to the terms of any winning bid by the deadline set forth in § 73.3700(b)(4) of this chapter.

(c) *Stopping procedures.* Before or during the reverse auction, procedures may be established regarding when bidding will stop for a round, a stage, or an entire auction, in order to terminate the auction within a reasonable time and in accordance with public interest considerations and the goals, statutory requirements, rules, and procedures for the auction, including any reserve price or prices.

(d) *Auction delay, suspension, or cancellation.* By public notice or by announcement during the reverse auction, the auction may be delayed, suspended, or cancelled in the event of a natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

§ 1.2204 Applications to participate in competitive bidding.

(a) *Public notice of the application process.* All applications to participate must be filed electronically. The dates and procedures for submitting applications to participate in the reverse auction shall be announced by public notice.

(b) *Applicant.* The applicant identified on the application to participate must be the broadcast television licensee that would relinquish spectrum usage rights if it becomes a winning bidder. In the case of a channel sharing bid, the applicant will be the proposed channel sharee.

(c) *Information and certifications provided in the application to participate.* An applicant may be required to provide the following information in its application to participate in the reverse auction:

(1) The following identifying information:

(i) If the applicant is an individual, the applicant's name and address. If the applicant is a corporation, the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, the name, citizenship, and address of all general partners, and, if a general partner is not a natural person, then the name and title of a responsible person for that partner, as well. If the applicant is a trust, the name and address of the trustee. If the applicant is none of the above, it must identify and describe itself and its principals or other responsible persons;

(ii) Applicant ownership and other information as set forth in § 1.2112(a); and

(iii) List, in the case of a non-profit entity, the name, address, and citizenship of each member of the governing board and of any educational institution or governmental entity with a controlling interest in the applicant, if applicable.

(2) The identity of the person(s) authorized to take binding action in the bidding on behalf of the applicant.

(3) For each broadcast television license for which the applicant intends to submit reverse auction bids:

(i) The identity of the station and its television channel;

(ii) Whether it is a full-power or Class A television station;

(iii) If the license is for a Class A television station, certification under penalty of perjury that it is and will remain in compliance with the ongoing statutory eligibility requirements to remain a Class A station;

(iv) Whether it is an NCE station and, if so, whether it operates on a reserved or non-reserved channel;

(v) The types of reverse auction bids that the applicant may submit;

(vi) Whether the license for the station is subject to a non-final revocation order, has expired and is subject to a non-final cancellation order, or if for a Class A station is subject to a non-final downgrade order and, if the license is subject to such a proceeding or order, then an acknowledgement that the Commission will place all of its auction proceeds into escrow pending the final outcome of the proceeding or order; and

(vii) Any additional information required to assess the spectrum usage rights offered.

(4) For each broadcast television license for which the applicant intends to submit a license relinquishment bid:

(i) Whether it intends to enter into a channel sharing agreement if it becomes a winning bidder;

(ii) Whether it will control another broadcast station if it becomes a winning bidder and terminates operations; and

(iii) If it will control another broadcast station, an acknowledgement that it will remain subject to any pending license renewal, as well as any enforcement action, against the station offered; or

(iv) If it will not control another broadcast station, an acknowledgement that the Commission will place a share of its auction proceeds into escrow to cover any potential forfeiture costs associated with any pending license renewal or any pending enforcement action against the station offered.

(5) For each broadcast television license for which the applicant intends to submit a channel sharing bid:

(i) The identity of the channel sharer and the television channel the applicant has agreed to share;

(ii) Any required information regarding the channel sharing agreement, including a copy of the executed channel sharing agreement;

(iii) Certification under penalty of perjury that the channel sharing agreement is consistent with all Commission rules and policies, and that the applicant accepts any risk that the implementation of the channel sharing agreement may not be feasible for any reason, including any conflict with requirements for operation on the shared channel;

(iv) Certification under penalty of perjury that its operation from the shared channel facilities will not result in a change to its Designated Market Area;

(v) Certification under penalty of perjury that it can meet the community of license coverage requirement set forth in §73.625(a) of this chapter from the shared channel facilities or, if not, that the new community of license for its shared channel facilities either meets the same or a higher allotment priority as its current community; or, if no community meets the same or higher allotment priority, provides the next highest priority;

(vi) Certification under penalty of perjury that the proposed channel sharing arrangement will not violate the multiple ownership rules, set forth in §73.3555 of this chapter, based on facts at the time the application is submitted; and

(vii) Certification by the channel sharer under penalty of perjury with respect to the certifications described in paragraphs (c)(3)(iii), (c)(5)(iii), and (c)(5)(vi) of this section.

(6) Certification under penalty of perjury that the applicant and all of the person(s) disclosed under paragraph (c)(1) of this section are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant. For the purposes of this certification, the term ''person'' means an individual, partnership, association, joint-stock company, trust, or corporation, and the term ''reasons of national security'' means matters relating to the national defense and foreign relations of the United States.

(7) Certification that the applicant agrees that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the bids it submits in the reverse auction.

(8) Certification that the applicant agrees that the bids it submits in the reverse auction are irrevocable, binding offers by the applicant.

(9) Certification that the individual submitting the application to participate and providing the certifications is authorized to do so on behalf of the applicant, and if such individual is not an officer, director, board member, or controlling interest holder of the applicant, evidence that such individual has the authority to bind the applicant.

(10) Certification that the applicant is in compliance with all statutory and regulatory requirements for participation in the reverse auction, including any requirements with respect to the

license(s) identified in the application to participate.

(11) Such additional information as may be required.

(d) *Application processing.* (1) Any timely submitted application to participate will be reviewed for completeness and compliance with the Commission's rules. No untimely applications to participate shall be reviewed or considered.

(2) Any application to participate that does not contain all of the certifications required pursuant to this section is unacceptable for filing, cannot be corrected subsequent to the application filing deadline, and will be dismissed with prejudice.

(3) Applicants will be provided a limited opportunity to cure specified defects and to resubmit a corrected application to participate. During the resubmission period for curing defects, an application to participate may be amended or modified to cure identified defects or to make minor amendments or modifications. After the resubmission period has ended, an application to participate may be amended or modified to make minor changes or correct minor errors in the application to participate. Minor amendments may be subject to a deadline specified by public notice. Major amendments cannot be made to an application to participate after the initial filing deadline. Major amendments include, but are not limited to, changes in ownership of the applicant that would constitute an assignment or transfer of control, changes to any of the required certifications, and the addition or removal of licenses identified on the application to participate for which the applicant intends to submit reverse auction bids. Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application.

(4) Applicants that fail to correct defects in their applications to participate in a timely manner as specified by public notice will have their applications to participate dismissed with no opportunity for resubmission.

(5) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications to participate. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application to participate continues until they are made.

(e) *Notice to qualified and non-qualified applicants.* Each applicant will be notified as to whether it is qualified or not qualified to participate in the reverse auction.

[79 FR 48530, Aug. 15, 2014, as amended at 80 FR 67342, Nov. 2, 2015]

§ 1.2205 Prohibition of certain communications.

(a) *Definitions.* (1) For the purposes of this section, a *full power broadcast television licensee,* or a *Class A broadcast television licensee,* shall include all controlling interests in the licensee, and all officers, directors, and governing board members of the licensee.

(2) For the purposes of this section, the term forward auction applicant is defined the same as the term applicant is defined in § 1.2105(c)(5).

(b) *Certain communications prohibited.* (1) Except as provided in paragraph (b)(2) of this section, in the broadcast television spectrum incentive auction conducted under section 6403 of the Spectrum Act, beginning on the deadline for submitting applications to participate in the reverse auction and until the results of the incentive auction are announced by public notice, all full power and Class A broadcast television licensees are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any other full power or Class A broadcast television licensee or to any forward auction applicant.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to the following:

(i) Communications between full power or Class A broadcast television licensees if they share a common controlling interest, director, officer, or governing board member as of the deadline for submitting applications to participate in the reverse auction;

(ii) Communications between a forward auction applicant and a full power or Class A broadcast television licensee if a controlling interest, director, officer, or holder of any 10 percent or greater ownership interest in the forward auction applicant, as of the deadline for submitting short-form applications to participate in the forward auction, is also a controlling interest, director, officer, or governing board member of the full power or Class A broadcast television licensee, as of the deadline for submitting applications to participate in the reverse auction; and

(iii) Communications regarding reverse auction applicants' (but not forward auction applicants') bids and bidding strategies between parties to a channel sharing agreement executed prior to the deadline for submitting applications to participate in the reverse auction and disclosed on a reverse auction application.

(c) *Duty to report potentially prohibited communications.* A party that makes or receives a communication prohibited under paragraph (b) of this section shall report such communication in writing immediately, and in any case no later than five business days after the communication occurs. A party's obligation to make such a report continues until the report has been made.

(d) *Procedures for reporting potentially prohibited communications.* Reports under paragraph (c) of this section shall be filed as directed in public notices detailing procedures for bidding in the incentive auction. If no public notice provides direction, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available, including electronic transmission such as email.

(e) *Violations.* A party who is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, in addition to any other applicable sanctions, may be subject to forfeiture of its winning bid incentive payment and revocation of its licenses, where applicable, and may be prohibited from participating in future auctions.

NOTE 1 TO §1.2205: References to ''full power broadcast television licensees'' and ''Class A broadcast television licensees'' are intended to include all broadcast television licensees that are or could become eligible to participate in the reverse auction, including broadcast television licensees that may be parties to a channel sharing agreement.

NOTE 2 TO §1.2205: For the purposes of this section, ''controlling interests'' include individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions.

NOTE 3 TO §1.2205: The prohibition described in §1.2205(b)(1) applies to controlling interests, officers, directors, and governing board members of a full power or Class A broadcast television licensee as of the deadline for submitting applications to participate in the reverse auction, and any additional such parties at any subsequent point prior to the announcement by public notice of the results of the incentive auction. Thus, if, for example, a full power or Class A broadcast television licensee appoints a new officer after the application deadline, that new officer would be subject to the prohibition in §1.2205(b)(1), but would not be included within the exceptions described in §§1.2205(b)(2)(i) and (ii).

[79 FR 48530, Aug. 15, 2014, as amended at 80 FR 56816, Sept. 18, 2015]

§ 1.2206 Confidentiality of Commission-held data.

(a) The Commission will take all reasonable steps necessary to protect all Confidential Broadcaster Information for all reverse auction applicants from the time the broadcast television licensee applies to participate in the reverse auction until the reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective or until two years after public notice that the reverse auction is complete and that no such reassignments and reallocations shall become effective.

(b) In addition, if reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective, the Commission will continue to take all reasonable steps necessary to protect Confidential Broadcaster Information pertaining to any unsuccessful reverse auction bid and pertaining to any unsuccessful application to participate in the reverse auction until two years after the effective date.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Commission may disclose Confidential Broadcaster Information if required to do so by law, such as by court order.

(d) *Confidential Broadcaster Information* includes the following Commission-held data of a broadcast television licensee participating in the reverse auction:

(1) The name of the applicant licensee;

(2) The licensee's channel number, call sign, facility identification number, and network affiliation; and

(3) Any other information that may reasonably be withheld to protect the identity of the licensee, as determined by the Commission.

§ 1.2207 Two competing participants required.

The Commission may not enter into an agreement for a licensee to relinquish spectrum usage rights in exchange for a share of the proceeds from the related forward auction assigning new spectrum licenses unless at least two competing licensees participate in the reverse auction.

§ 1.2208 Public notice of auction completion and auction results.

Public notice shall be provided when the reverse auction is complete and when the forward auction is complete. With respect to the broadcast television spectrum incentive auction conducted under section 6403 of the Spectrum Act, public notice shall be provided of the results of the reverse auction, forward auction, and repacking, and shall indicate that the reassignments of television channels and reallocations of broadcast television spectrum are effective.

§ 1.2209 Disbursement of incentive payments.

A winning bidder shall submit the necessary financial information to facilitate the disbursement of the winning bidder's incentive payment. Specific procedures for submitting financial information, including applicable deadlines, will be set out by public notice.

Subpart R—Implementation of Section 4(g)(3) of the Communications Act: Procedures Governing Acceptance of Unconditional Gifts, Donations and Bequests

SOURCE: 59 FR 38128, July 27, 1994, unless otherwise noted.

§ 1.3000 Purpose and scope.

The purpose of this subpart is to implement the Telecommunications Authorization Act of 1992 which amended the Communications Act by creating section 4(g)(3), 47 U.S.C. 154(g)(3). The provisions of this subpart shall apply to gifts, donations and bequests made to the Commission itself. Travel reimbursement for attendance at, or participation in, government-sponsored meetings or events required to carry out the Commission's statutory or regulatory functions may also be accepted under this subpart. The acceptance of gifts by Commission employees, most notably gifts of food, drink and entertainment, is governed by the government-wide standards of employee conduct established at 5 CFR part 2635.

Travel, subsistence and related expenses for non-government-sponsored meetings or events will continue to be accepted pursuant to the Government Employees Training Act, 41 U.S.C. 4111 or 31 U.S.C. 1353, and its General Services Administration's implementing regulations, 41 CFR 304–1.8, as applicable.

§ 1.3001 Definitions.

For purposes of this subpart:

(a) The term *agency* means the Federal Communications Commission.

(b) The term *gift* means any unconditional gift, donation or bequest of real, personal and other property (including voluntary and uncompensated services as authorized under 5 U.S.C. 3109).

(c) The terms *agency ethics official*, *designated agency ethics official*, *employee*, *market value*, *person*, and *prohibited source*, have the same meaning as found in 5 CFR 2635.102, 2635.203.

§ 1.3002 Structural rules and prohibitions.

(a) *General prohibitions*. An employee shall not:

(1) Directly or indirectly, solicit or coerce the offering of a gift, donation or bequest to the Commission from a regulated entity or other prohibited source; or

(2) Accept gifts of cash pursuant to this subpart.

(b) *Referral of offers to designated agency ethics official*. Any person who seeks to offer any gift to the Commission under the provisions of this subpart shall make such offer to the Commission's designated agency ethics official. In addition, any Commission employee who is contacted by a potential donor or the representative thereof for the purpose of discussing the possibility of making a gift, donation or bequest to the Commission shall immediately refer such person or persons to the Commission's designated agency ethics official. The designated agency ethics official shall, in consultation with other agency ethics officials, make a determination concerning whether acceptance of such offers would create a conflict of interest or the appearance of a conflict of interest. Agency ethics officials may also advise potential donors and their representatives of the types of equipment, property or services that may be of use to the Commission and the procedures for effectuating gifts set forth in this subpart. The Commission may, in its discretion, afford public notice before accepting any gift under authority of this subpart.

§ 1.3003 Mandatory factors for evaluating conflicts of interest.

No gift shall be accepted under this subpart unless a determination is made that its acceptance would not create a conflict of interest or the appearance of a conflict of interest. In making conflict of interest determinations, designated agency ethics officials shall consider the following factors:

(a) Whether the benefits of the intended gift will accrue to an individual employee and, if so—

(1) Whether the employee is responsible for matters affecting the potential donor that are currently before the agency; and

(2) The significance of the employee's role in any such matters;

(b) The nature and sensitivity of any matters pending at the Commission affecting the intended donor;

(c) The timing of the intended gift;

(d) The market value of the intended gift;

(e) The frequency of other gifts made by the same donor; and

(f) The reason underlying the intended gift given in a written statement from the proposed donor.

§ 1.3004 Public disclosure and reporting requirements.

(a) *Public disclosure of gifts accepted from prohibited sources*. The Commission's Security Operations Office, Office of the Managing Director, shall maintain a written record of gifts accepted from prohibited sources by the Commission pursuant to section 4(g)(3) authority, which will include:

(1) The identity of the prohibited source;

(2) A description of the gift;

(3) The market value of the gift;

(4) Documentation concerning the prohibited source's reason for the gift as required in § 1.3003(f);

(5) A signed statement of verification from the prohibited source that the

gift is unconditional and is not contingent on any promise or expectation that the Commission's receipt of the gift will benefit the proposed donor in any regulatory matter; and

(6) The date the gift is accepted by the Commission.

(b) *Reporting Requirements for all gifts.* The Commission shall file a semi-annual report to Congress listing the gift, donor and value of all gifts accepted from any donor under this subpart.

Subpart S—Preemption of Restrictions That ''Impair'' the Ability To Receive Television Broadcast Signals, Direct Broadcast Satellite Services, or Multichannel Multipoint Distribution Services or the Ability To Receive or Transmit Fixed Wireless Communications Signals

SOURCE: 66 FR 2333, Jan. 11, 2001, unless otherwise noted.

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(a)(1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of:

(i) An antenna that is:

(A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services, and

(B) One meter or less in diameter or is located in Alaska;

(ii) An antenna that is:

(A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services, and

(B) That is one meter or less in diameter or diagonal measurement;

(iii) An antenna that is used to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, ''fixed wireless signals'' means any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Fixed wireless signals do not include, among other things, AM radio, FM radio, amateur (''HAM'') radio, CB radio, and Digital Audio Radio Service (DARS) signals.

(3) For purposes of this section, a law, regulation, or restriction impairs installation, maintenance, or use of an antenna if it:

(i) Unreasonably delays or prevents installation, maintenance, or use;

(ii) Unreasonably increases the cost of installation, maintenance, or use; or

(iii) Precludes reception or transmission of an acceptable quality signal.

(4) Any fee or cost imposed on a user by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (d) or (e) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (d) or (e) of this section, the entity seeking to enforce the antenna restrictions in question must suspend

all enforcement efforts pending completion of review. No attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is issued adverse to a user, the user shall be granted at least a 21-day grace period in which to comply with the adverse ruling; and neither a fine nor a penalty may be collected from the user if the user complies with the adverse ruling during this grace period, unless the proponent of the restriction demonstrates, in the same proceeding which resulted in the adverse ruling, that the user's claim in the proceeding was frivolous.

(5) For purposes of this section, ''hub or relay antenna'' means any antenna that is used to receive or transmit fixed wireless signals for the distribution of fixed wireless services to multiple customer locations as long as the antenna serves a customer on whose premises it is located, but excludes any hub or relay antenna that is used to provide any telecommunications services or services that are provided on a commingled basis with telecommunications services.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if:

(1) It is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble, or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance, or use of other modern appurtenances, devices, or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraphs (b)(1) or (b)(2) of this section.

(c) [Reserved]

(d) Local governments or associations may apply to the Commission for a waiver of this section under §1.3 of this chapter. Waiver requests must comply with the procedures in paragraphs (f) and (h) of this section and will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(e) Parties may petition the Commission for a declaratory ruling under §1.2 of this chapter, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission must comply with the procedures in paragraphs (f) and (h) of this section and will be put on public notice. Any responsive pleadings in a Commission proceeding must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies in a Commission proceeding must be served on all parties and filed within 15 days thereafter.

(f) Copies of petitions for declaratory rulings and waivers must be served on interested parties, including parties against whom the petitioner seeks to enforce the restriction or parties whose restrictions the petitioner seeks to prohibit. A certificate of service stating on whom the petition was served must be filed with the petition. In addition,

in a Commission proceeding brought by an association or a local government, constructive notice of the proceeding must be given to members of the association or to the citizens under the local government's jurisdiction. In a court proceeding brought by an association, an association must give constructive notice of the proceeding to its members. Where constructive notice is required, the petitioner or plaintiff must file with the Commission or the court overseeing the proceeding a copy of the constructive notice with a statement explaining where the notice was placed and why such placement was reasonable.

(g) In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance, or use of devices used for over-the-air reception of video programming services or devices used to receive or transmit fixed wireless signals shall be on the party that seeks to impose or maintain the restriction.

(h) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). Copies of the petitions and related pleadings will be available for public inspection in the Reference Information Center, Consumer and Governmental Affairs Bureau, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

[66 FR 2333, Jan. 11, 2001, as amended at 67 FR 13224, Mar. 21, 2002; 82 FR 41103, Aug. 29, 2017; 85 FR 18146, Apr. 1, 2020; 85 FR 64405, Oct. 13, 2020; 86 FR 11442, Feb. 25, 2021]

Subpart T—Foreign Ownership of Broadcast, Common Carrier, Aeronautical En Route, and Aeronautical Fixed Radio Station Licensees

SOURCE: 81 FR 86601, Dec. 1, 2016, unless otherwise noted.

§ 1.5000 Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.

The rules in this subpart establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in broadcast, common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees that would exceed the 25 percent benchmark in section 310(b)(4) of the Act. These rules also establish the requirements and conditions for obtaining the Commission's prior approval of foreign ownership in common carrier (but not broadcast, aeronautical en route or aeronautical fixed) radio station licensees and spectrum lessees that would exceed the 20 percent limit in section 310(b)(3) of the Act. These rules also establish the methodology applicable to eligible U.S. public companies for purposes of determining and ensuring their compliance with the foreign ownership limitations set forth in sections 310(b)(3) and 310(b)(4) of the Act.

(a)(1) A broadcast, common carrier, aeronautical en route or aeronautical fixed radio station licensee or common carrier spectrum lessee shall file a petition for declaratory ruling to obtain Commission approval under section 310(b)(4) of the Act, and obtain such approval, before the aggregate foreign ownership of any controlling, U.S.-organized parent company exceeds, directly and/or indirectly, 25 percent of the U.S. parent's equity interests and/or 25 percent of its voting interests. An applicant for a broadcast, common carrier, aeronautical en route or aeronautical fixed radio station license or common carrier spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application.

(2) A common carrier radio station licensee or spectrum lessee shall file a petition for declaratory ruling to obtain approval under the Commission's section 310(b)(3) forbearance approach, and obtain such approval, before aggregate foreign ownership, held through one or more intervening U.S.-organized entities that hold non-controlling equity and/or voting interests in the licensee, along with any foreign interests held directly in the licensee or spectrum lessee, exceeds 20 percent of its equity interests and/or 20 percent of its voting interests. An applicant for a common carrier radio station license or spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application. Foreign interests held directly in a licensee or spectrum lessee, or other than through U.S.-organized entities that hold non-controlling equity and/or voting interests in the licensee or spectrum lessee, shall not be permitted to exceed 20 percent.

NOTE 1 TO PARAGRAPH (a): Paragraph (a)(1) of this section implements the Commission's foreign ownership policies under section 310(b)(4) of the Act, 47 U.S.C. 310(b)(4), for broadcast, common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees. It applies to foreign equity and/or voting interests that are held, or would be held, directly and/or indirectly in a U.S.-organized entity that itself directly or indirectly controls a broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station licensee or common carrier spectrum lessee. A foreign individual or entity that seeks to hold a controlling interest in such a licensee or spectrum lessee must hold its controlling interest indirectly, in a U.S.-organized entity that itself directly or indirectly controls the licensee or spectrum lessee. Such controlling interests are subject to section 310(b)(4) and the requirements of paragraph (a)(1) of this section. The Commission assesses foreign ownership interests subject to section 310(b)(4) separately from foreign ownership interests subject to section 310(b)(3).

NOTE 2 TO PARAGRAPH (a): Paragraph (a)(2) of this section implements the Commission's section 310(b)(3) forbearance approach adopted in the First Report and Order in IB Docket No. 11–133, FCC 12–93 (released Aug. 17, 2012), 77 FR 50628 (Aug. 22, 2012). The section 310(b)(3) forbearance approach applies only to foreign equity and voting interests that are held, or would be held, in a common carrier licensee or spectrum lessee through one or more intervening U.S.-organized entities that do not control the licensee or spectrum lessee. Foreign equity and/or voting interests that are held, or would be held, directly in a licensee or spectrum lessee, or indirectly other than through an intervening U.S.-organized entity, are not subject to the Commission's section 310(b)(3) forbearance approach and shall not be permitted to exceed the 20 percent limit in section 310(b)(3) of the Act, 47 U.S.C. 310(b)(3). The Commission's forbearance approach does not apply to broadcast, aeronautical en route or aeronautical fixed radio station licenses.

Example 1. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is wholly owned and controlled by U.S.-organized Corporation B. U.S.-organized Corporation B is 51 percent owned and controlled by U.S.-organized Corporation C, which is, in turn, wholly owned and controlled by foreign-organized Corporation D. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation B are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by U.S. citizens. Paragraph (a)(1) of this section requires that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of the 51 percent foreign ownership of its controlling, U.S.-organized parent, Corporation B, by foreign-organized Corporation D, which exceeds the 25 percent benchmark in section 310(b)(4) of the Act for both equity interests and voting interests. Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or ''group,'' as defined in paragraph (d) of this section, that holds directly and/or indirectly more than 5 percent of Corporation B's total outstanding capital stock (equity) and/or voting stock, or a controlling interest in Corporation B, unless the foreign investment is exempt under §1.5001(i)(3).

Example 2. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by U.S. citizens. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraph (a)(2) of this section requires that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of the non-controlling 49 percent foreign ownership of U.S.-organized Corporation

A by foreign-organized Corporation Y through U.S.-organized Corporation X, which exceeds the 20 percent limit in section 310(b)(3) of the Act for both equity interests and voting interests. U.S.-organized Corporation A is also required to identify and request specific approval in its petition for any foreign individual or entity, or ''group,'' as defined in paragraph (d) of this section, that holds an equity and/or voting interest in foreign-organized Corporation Y that, when multiplied by 49 percent, would exceed 5 percent of U.S.-organized Corporation A's equity and/or voting interests, unless the foreign investment is exempt under §1.5001(i)(3).

Example 3. U.S.-organized Corporation A is preparing an application to acquire a common carrier radio license by assignment from another licensee. U.S.-organized Corporation A is 51 percent owned and controlled by U.S.-organized Corporation B, which is, in turn, wholly owned and controlled by foreign-organized Corporation C. The remaining non-controlling 49 percent equity and voting interests in U.S.-organized Corporation A are held by U.S.-organized Corporation X, which is, in turn, wholly owned and controlled by foreign-organized Corporation Y. Paragraphs (a)(1) and (a)(2) of this section require that U.S.-organized Corporation A file a petition for declaratory ruling to obtain Commission approval of foreign-organized Corporation C's 100 percent ownership interest in U.S.-organized parent, Corporation B, and of foreign-organized Corporation Y's non-controlling, 49 percent foreign ownership interest in U.S.-organized Corporation A through U.S-organized Corporation X, which exceed the 25 percent benchmark and 20 percent limit in sections 310(b)(4) and 310(b)(3) of the Act, respectively, for both equity interests and voting interests. U.S-organized Corporation A's petition also must identify and request specific approval for ownership interests held by any foreign individual, entity, or ''group,'' as defined in paragraph (d) of this section, to the extent required by §1.5001(i).

(b) Except for petitions involving broadcast stations only, the petition for declaratory ruling required by paragraph (a) of this section shall be filed electronically through the International Bureau Filing System (IBFS) or any successor system thereto. For information on filing a petition through IBFS, see part 1, subpart Y and the IBFS homepage at *http://www.fcc.gov/ib*. Petitions for declaratory ruling required by paragraph (a) of this section involving broadcast stations only shall be filed electronically on the Internet through the Media Bureau's Consolidated Database System (CDBS) or any successor system thereto when submitted to the Commission as part of an application for a construction permit, assignment, or transfer of control of a broadcast license; if there is no associated construction permit, assignment or transfer of control application, petitions for declaratory ruling should be filed with the Office of the Secretary via the Commission's Electronic Comment Filing System (ECFS).

(c)(1) Each applicant, licensee, or spectrum lessee filing a petition for declaratory ruling required by paragraph (a) of this section shall certify to the information contained in the petition in accordance with the provisions of §1.16 and the requirements of this paragraph. The certification shall include a statement that the applicant, licensee and/or spectrum lessee has calculated the ownership interests disclosed in its petition based upon its review of the Commission's rules and that the interests disclosed satisfy each of the pertinent standards and criteria set forth in the rules.

(2) Multiple applicants and/or licensees shall file jointly the petition for declaratory ruling required by paragraph (a) of this section where the entities are under common control and contemporaneously hold, or are contemporaneously filing applications for, broadcast, common carrier licenses, common carrier spectrum leasing arrangements, or aeronautical en route or aeronautical fixed radio station licenses. Where joint petitioners have different responses to the information required by §1.5001, such information should be set out separately for each joint petitioner, except as otherwise permitted in §1.5001(h)(2).

(i) Each joint petitioner shall certify to the information contained in the petition in accordance with the provisions of §1.16 with respect to the information that is pertinent to that petitioner. Alternatively, the controlling parent of the joint petitioners may certify to the information contained in the petition.

(ii) Where the petition is being filed in connection with an application for consent to transfer control of licenses or spectrum leasing arrangements, the transferee or its ultimate controlling

parent may file the petition on behalf of the licensees or spectrum lessees that would be acquired as a result of the proposed transfer of control and certify to the information contained in the petition.

(3) Multiple applicants and licensees shall not be permitted to file a petition for declaratory ruling jointly unless they are under common control.

(d) The following definitions shall apply to this section and §§1.5001 through 1.5004.

(1) *Aeronautical radio* licenses refers to aeronautical en route and aeronautical fixed radio station licenses only. It does not refer to other types of aeronautical radio station licenses.

(2) *Affiliate* refers to any entity that is under common control with a licensee, defined by reference to the holder, directly and/or indirectly, of more than 50 percent of total voting power, where no other individual or entity has *de facto* control.

(3) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership. *Control* also includes direct or indirect control, such as through intervening subsidiaries.

(4) *Entity* includes a partnership, association, estate, trust, corporation, limited liability company, governmental authority or other organization.

(5) *Group* refers to two or more individuals or entities that have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the relevant licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent.

(6) *Individual* refers to a natural person as distinguished from a partnership, association, corporation, or other organization.

(7) *Licensee* as used in §§1.5000 through 1.5004 includes a spectrum lessee as defined in §1.9003.

(8) *Privately held company* refers to a U.S.- or foreign-organized company that has not issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under sections 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a *et seq*. (Exchange Act), and corresponding Exchange Act Rule 13d–1, 17 CFR 240.13d–1, or a substantially comparable foreign law or regulation.

(9) *Public company* refers to a U.S.- or foreign-organized company that has issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under sections 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a *et seq*. (Exchange Act) and corresponding Exchange Act Rule 13d–1, 17 CFR 240.13d–1, or a substantially comparable foreign law or regulation.

(10) *Subsidiary* refers to any entity in which a licensee owns or controls, directly and/or indirectly, more than 50 percent of the total voting power of the outstanding voting stock of the entity, where no other individual or entity has *de facto* control.

(11) *Voting stock* refers to an entity's corporate stock, partnership or membership interests, or other equivalents of corporate stock that, under ordinary circumstances, entitles the holders thereof to elect the entity's board of directors, management committee, or other equivalent of a corporate board of directors.

(12) *Would hold* as used in §§1.5000 through 1.5004 includes interests that an individual or entity proposes to hold in an applicant, licensee, or spectrum lessee, or their controlling U.S. parent, upon consummation of any transactions described in the petition for declaratory ruling filed under paragraphs (a)(1) or (2) of this section.

(e)(1) This section sets forth the methodology applicable to broadcast, common carrier, aeronautical en route, and aeronautical fixed radio station licensees and common carrier spectrum lessees that are, or are directly or indirectly controlled by, an eligible U.S. public company for purposes of monitoring the licensee's or spectrum lessee's compliance with the foreign ownership limits set forth in sections 310(b)(3) and 310(b)(4) of the Act and with the terms and conditions of a licensee's or spectrum lessee's foreign ownership ruling issued pursuant to paragraph (a)(1) or (2) of this section. For purposes of this section:

(i) An ''eligible U.S. public company'' is a company that is organized in the United States; whose stock is traded on a stock exchange in the United States; and that has issued a class of equity securities for which beneficial ownership reporting is required by security holders and other beneficial owners under sections 13(d) or 13(g) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a *et seq.* (Exchange Act) and corresponding Exchange Act Rule 13d–1, 17 CFR 240.13d–1;

(ii) A ''beneficial owner'' of a security refers to any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power, which includes the power to vote, or to direct the voting of, such security; and

(iii) An ''equity interest holder'' refers to any person or entity that has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, a share.

(2) An eligible U.S. public company shall use information that is known or reasonably should be known by the company in the ordinary course of business, as described in this paragraph, to identify the beneficial owners and equity interest holders of its voting and non-voting stock:

(i) Information recorded in the company's share register;

(ii) Information as to shares held by officers, directors, and employees;

(iii) Information reported to the Securities and Exchange Commission (SEC) in Schedule 13D (17 CFR 240.13d–101) and in Schedule 13G (17 CFR 240.13d–102), including amendments filed by or on behalf of a reporting person, and company-specific information derived from SEC Form 13F (17 CFR 249.325);

(iv) Information as to beneficial owners of shares required to be identified in a company's annual reports (or proxy statements) and quarterly reports;

(v) Information as to the identify and citizenship of a beneficial owner and/or equity interest holder where such information is actually known to the public company as a result of shareholder litigation, financing transactions, and proxies voted at annual or other meetings; and

(vi) Information as to the identity and citizenship of a beneficial owner and/or equity interest holder where such information is actually known to the company by whatever source.

(3) An eligible U.S. public company shall use information that is known or reasonably should be known by the company in the ordinary course of business to determine the citizenship of the beneficial owners and equity interest holders, identified pursuant to paragraph (e)(2) of this section, including information recorded in the company's shareholder register, information required to be disclosed pursuant to rules of the Securities and Exchange Commission, other information that is publicly available to the company, and information received by the company through direct inquiries with the beneficial owners and equity interest holders where the company determines that direct inquiries are necessary to its compliance efforts.

(4) A licensee or spectrum lessee that is, or is directly or indirectly controlled by, an eligible U.S. public company, shall exercise due diligence in identifying and determining the citizenship of such public company's beneficial owners and equity interest holders.

(5) To calculate aggregate levels of foreign ownership, a licensee or spectrum lessee that is, or is directly or indirectly controlled by, an eligible U.S. public company, shall base its foreign ownership calculations on such public company's known or reasonably should be known foreign equity and voting interests as described in paragraphs (e)(2) and (3) of this section. The licensee shall aggregate the public company's known or reasonably should be known foreign voting interests and separately aggregate the public company's known or reasonably should be known foreign equity interests. If the public company's known or reasonably should be known foreign voting interests *and* its known or reasonably should be known foreign equity interests do not exceed 25 percent (20 percent in the case of an eligible publicly traded licensee subject to section 310(b)(3)) of the company's total outstanding voting shares *or* 25

percent (20 percent in the case of an eligible publicly traded licensee subject to Section 310(b)(3)) of the company's total outstanding shares (whether voting or non-voting), respectively, the company shall be deemed compliant, under this section, with the applicable statutory limit.

Example. Assume that a licensee's controlling U.S. parent is an eligible U.S. public company. The publicly traded U.S. parent has one class of stock consisting of 100 total outstanding shares of common voting stock. The licensee (and/or the U.S. parent on its behalf) has exercised the required due diligence in following the above-described methodology for identifying and determining the citizenship of the U.S. parent's ''known or reasonably should be known'' interest holders and has identified one foreign shareholder that owns 6 shares (*i.e.*, 6 percent of the total outstanding shares) and another foreign shareholder that owns 4 shares (*i.e.*, 4 percent of the total outstanding shares). The licensee would add the U.S. parent's known foreign shares and divide the sum by the number of the U.S. parent's total outstanding shares. In this example, the licensee's U.S. parent would be calculated as having an aggregate 10 percent foreign equity interests and 10 percent foreign voting interests (6 + 4 foreign shares = 10 foreign shares; 10 foreign shares divided by 100 total outstanding shares = 10 percent). Thus, in this example, the licensee would be deemed compliant with Section 310(b)(4).

§ 1.5001 Contents of petitions for declaratory ruling under section 310(b) of the Communications Act of 1934, as amended.

The petition for declaratory ruling required by § 1.5000(a)(1) and/or (2) shall contain the following information:

(a) With respect to each petitioning applicant or licensee, provide its name; FCC Registration Number (FRN); mailing address; place of organization; telephone number; facsimile number (if available); electronic mail address (if available); type of business organization (e.g., corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)); name and title of officer certifying to the information contained in the petition.

(b) If the petitioning applicant or licensee is represented by a third party (e.g., legal counsel), specify that individual's name, the name of the firm or company, mailing address and telephone number/electronic mail address.

(c)(1) For each named licensee, list the type(s) of radio service authorized (e.g., broadcast service, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service). In the case of broadcast licensees, also list the call sign, facility identification number (if applicable), and community of license or transmit site for each authorization covered by the petition.

(2) If the petition is filed in connection with an application for a radio station license or a spectrum leasing arrangement, or an application to acquire a license or spectrum leasing arrangement by assignment or transfer of control, specify for each named applicant:

(i) The File No(s). of the associated application(s), if available at the time the petition is filed; otherwise, specify the anticipated filing date for each application; and

(ii) The type(s) of radio services covered by each application (e.g., broadcast service, cellular radio telephone service; microwave radio service; mobile satellite service; aeronautical fixed service).

(d) With respect to each petitioner, include a statement as to whether the petitioner is requesting a declaratory ruling under § 1.5000(a)(1) and/or (2).

(e) *Disclosable interest holders—direct U.S. or foreign interests in the controlling U.S. parent.* Paragraphs (e)(1) through (4) of this section apply only to petitions filed under § 1.5000(a)(1) and/or (2) for common carrier, aeronautical en route, and aeronautical fixed radio station applicants or licensees, as applicable. Petitions filed under § 1.5000(a)(1) for broadcast licensees shall provide the name of any individual or entity that holds, or would hold, directly, an attributable interest in the controlling U.S. parent of the petitioning broadcast station applicant(s) or licensee(s), as defined in the Notes to § 73.3555 of this chapter. Where no individual or entity holds, or would hold, *directly*, an attributable interest in the controlling U.S. parent (for petitions filed under § 1.5000(a)(1)), the petition shall specify that no individual or entity holds, or

would hold, *directly*, an attributable interest in the U.S. parent, applicant(s), or licensee(s).

(1) *Direct U.S. or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under §1.5000(a)(1), provide the name of any individual or entity that holds, or would hold, *directly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s) as specified in paragraphs (e)(4)(i) through (iv) of this section.

(2) *Direct U.S. or foreign interests of ten percent or more or a controlling interest.* With respect to petitions filed under §1.5000(a)(2), provide the name of any individual or entity that holds, or would hold, *directly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in each petitioning common carrier applicant or licensee as specified in paragraphs (e)(4)(i) through (iv) of this section.

(3) Where no individual or entity holds, or would hold, *directly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent (for petitions filed under §1.5000(a)(1)) or in the applicant or licensee (for petitions filed under §1.5000(a)(2)), the petition shall state that no individual or entity holds or would hold *directly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the U.S. parent, applicant or licensee.

(4)(i) Where a named U.S. parent, applicant, or licensee is organized as a corporation, provide the name of any individual or entity that holds, or would hold, 10 percent or more of the outstanding capital stock and/or voting stock, or a controlling interest.

(ii) Where a named U.S. parent, applicant, or licensee is organized as a general partnership, provide the names of the partnership's constituent general partners.

(iii) Where a named U.S. parent, applicant, or licensee is organized as a limited partnership or limited liability partnership, provide the name(s) of the general partner(s) (in the case of a limited partnership), any uninsulated partner, regardless of its equity interest, and any insulated partner with an equity interest in the partnership of at least 10 percent (calculated according to the percentage of the partner's capital contribution). With respect to each named partner (other than a named general partner), the petitioner shall state whether the partnership interest is insulated or uninsulated, based on the insulation criteria specified in §1.5003.

(iv) Where a named U.S. parent, applicant, or licensee is organized as a limited liability company, provide the name(s) of each uninsulated member, regardless of its equity interest, any insulated member with an equity interest of at least 10 percent (calculated according to the percentage of its capital contribution), and any non-equity manager(s). With respect to each named member, the petitioner shall state whether the interest is insulated or uninsulated, based on the insulation criteria specified in §1.5003, and whether the member is a manager.

NOTE TO PARAGRAPH (e): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling (100 percent) voting interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(f) *Disclosable interest holders—indirect U.S. or foreign interests in the controlling U.S. parent.* Paragraphs (f)(1) through (3) of this section apply only to petitions filed under §1.5000(a)(1) and/or §1.5000(a)(2) for common carrier, aeronautical en route, and aeronautical fixed radio station applicants or licensees, as applicable. Petitions filed under §1.5000(a)(1) for broadcast licensees shall provide the name of any individual or entity that holds, or would hold, *indirectly*, an attributable interest in the controlling U.S. parent of the petitioning broadcast station applicant(s) or licensee(s), as defined in the Notes to §73.3555 of this chapter. Where no individual or entity holds, or would hold, *indirectly*, an attributable interest in the controlling U.S. parent (for petitions filed under §1.5000(a)(1)), the petition shall specify that no individual or entity holds, or would hold, *indirectly*,

an attributable interest in the U.S. parent, applicant(s), or licensee(s).

(1) *Indirect U.S. or foreign interests of 10 percent or more or a controlling interest*. With respect to petitions filed under §1.5000(a)(1), provide the name of any individual or entity that holds, or would hold, *indirectly*, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent of the petitioning common carrier or aeronautical radio station applicant(s) or licensee(s). Equity interests and voting interests held *indirectly* shall be calculated in accordance with the principles set forth in §1.5002.

(2) *Indirect U.S. or foreign interests of 10 percent or more or a controlling interest*. With respect to petitions filed under §1.5000(a)(2), provide the name of any individual or entity that holds, or would hold, *indirectly*, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the petitioning common carrier radio station applicant(s) or licensee(s). Equity interests and voting interests held *indirectly* shall be calculated in accordance with the principles set forth in §1.5002.

(3) Where no individual or entity holds, or would hold, *indirectly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the controlling U.S. parent (for petitions filed under §1.5000(a)(1)) or in the petitioning applicant(s) or licensee(s) (for petitions filed under §1.5000(a)(2)), the petition shall specify that no individual or entity holds *indirectly* 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the U.S. parent, applicant(s), or licensee(s).

NOTE TO PARAGRAPH (f): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(g)(1) *Citizenship and other information for disclosable interests in common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees*. For each 10 percent interest holder named in response to paragraphs (e) and (f) of this section, specify the equity interest held and the voting interest held (each to the nearest one percent); in the case of an individual, his or her citizenship; and in the case of a business organization, its place of organization, type of business organization (e.g., corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)), and principal business(es).

(2) *Citizenship and other information for disclosable interests in broadcast station applicants and licensees*. For each attributable interest holder named in response to paragraphs (e) and (f) of this section, describe the nature of the attributable interest and, if applicable, specify the equity interest held and the voting interest held (each to the nearest one percent); in the case of an individual, his or her citizenship; and in the case of a business organization, its place of organization, type of business organization (e.g., corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)), and principal business(es).

(h)(1) *Estimate of aggregate foreign ownership*. For petitions filed under §1.5000(a)(1), attach an exhibit that provides a percentage estimate of the controlling U.S. parent's aggregate direct and/or indirect foreign equity interests and its aggregate direct and/or indirect foreign voting interests. For petitions filed under §1.5000(a)(2), attach an exhibit that provides a percentage estimate of the aggregate foreign equity interests and aggregate foreign voting interests held directly in the petitioning applicant(s) and/or licensee(s), if any, and the aggregate foreign equity interests and aggregate foreign voting interests held indirectly in the petitioning applicant(s) and/or licensee(s). The exhibit required by this paragraph must also provide a general description of the methods used to determine the percentages, and a statement addressing the circumstances that prompted the filing of the petition

and demonstrating that the public interest would be served by grant of the petition.

(2) *Ownership and control structure.* Attach an exhibit that describes the ownership and control structure of the applicant(s) and/or licensee(s) that are the subject of the petition, including an ownership diagram and identification of the real party-in-interest disclosed in any companion applications. The ownership diagram should illustrate the petitioner's vertical ownership structure, including the controlling U.S. parent named in the petition (for petitions filed under §1.5000(a)(1)) and either:

(i) For common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees, the direct and indirect ownership (equity and voting) interests held by the individual(s) and/or entity(ies) named in response to paragraphs (e) and (f) of this section; or

(ii) For broadcast station applicants and licensees, the attributable interest holders named in response to paragraphs (e) and (f) of this section. Each such individual or entity shall be depicted in the ownership diagram and all controlling interests labeled as such. Where the petition includes multiple petitioners, the ownership of all petitioners may be depicted in a single ownership diagram or in multiple diagrams.

(i) *Requests for specific approval.* Provide, as required or permitted by this paragraph, the name of each foreign individual and/or entity for which each petitioner requests specific approval, if any, and the respective percentages of equity and/or voting interests (to the nearest one percent) that each such foreign individual or entity holds, or would hold, directly and/or indirectly, in the controlling U.S. parent of the petitioning broadcast, common carrier or aeronautical radio station applicant(s) or licensee(s) for petitions filed under §1.5000(a)(1), and in each petitioning common carrier applicant or licensee for petitions filed under §1.5000(a)(2).

(1) Each petitioning broadcast, common carrier or aeronautical radio station applicant or licensee filing under §1.5000(a)(1) shall identify and request specific approval for any foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly and/or indirectly, more than 5 percent of the equity and/or voting interests, or a controlling interest, in the petitioner's controlling U.S. parent unless the foreign investment is exempt under paragraph (i)(3) of this section. Equity and voting interests held *indirectly* in the petitioner's controlling U.S. parent shall be calculated in accordance with the principles set forth in §§1.5002 and 1.5003. Equity and voting interests held *directly* in a petitioner's controlling U.S. parent that is organized as a partnership or limited liability company shall be calculated in accordance with Note 1 to paragraph (i)(3)(ii)(C) of this section.

NOTE TO PARAGRAPH (i)(1): Solely for the purpose of identifying foreign interests that require specific approval under this paragraph (i), broadcast station applicants and licensees filing petitions under §1.5000(a)(1) should calculate equity and voting interests in accordance with the principles set forth in §§1.5002 and 1.5003 and *not* as set forth in the Notes to §73.3555 of this chapter, to the extent that there are any differences in such calculation methods. Notwithstanding the foregoing, the insulation of limited partnership, limited liability partnership, and limited liability company interests for broadcast applicants and licensees *shall* be determined in accordance with Note 2(f) of §73.3555 of this chapter.

(2) Each petitioning common carrier radio station applicant or licensee filing under §1.5000(a)(2) shall identify and request specific approval for any foreign individual, entity, or group of such individuals or entities that holds, or would hold, directly, and/or indirectly through one or more intervening U.S.-organized entities that do not control the applicant or licensee, more than 5 percent of the equity and/or voting interests in the applicant or licensee unless the foreign investment is exempt under paragraph (i)(3) of this section. Equity and voting interests held *indirectly* in the applicant or licensee shall be calculated in accordance with the principles set forth in §§1.5002 and 1.5003. Equity and voting interests held *directly* in an applicant or licensee that is organized as a partnership or limited liability company shall be calculated in accordance with

Note 1 to paragraph (i)(3)(ii)(C) of this section.

NOTE 1 TO PARAGRAPHS (i)(1) AND (2): Certain foreign interests of 5 percent or less may require specific approval under paragraphs (i)(1) and (2). *See* Note 2 to paragraph (i)(3)(ii)(C) of this section.

NOTE 2 TO PARAGRAPHS (i)(1) AND (2): Two or more individuals or entities will be treated as a ''group'' when they have agreed to act together for the purpose of acquiring, holding, voting, or disposing of their equity and/or voting interests in the licensee and/or controlling U.S. parent of the licensee or in any intermediate company(ies) through which any of the individuals or entities holds its interests in the licensee and/or controlling U.S. parent of the licensee.

(3) A foreign investment is exempt from the specific approval requirements of paragraphs (i)(1) and (2) of this section where:

(i) The foreign individual or entity holds, or would hold, directly and/or indirectly, no more than 10 percent of the equity and/or voting interests of the U.S. parent (for petitions filed under §1.5000(a)(1)) or the petitioning applicant or licensee (for petitions filed under §1.5000(a)(2)); *and*

(ii) The foreign individual or entity does not hold, and would not hold, a controlling interest in the petitioner or any controlling parent company, does not plan or intend to change or influence control of the petitioner or any controlling parent company, does not possess or develop any such purpose, and does not take any action having such purpose or effect. The Commission will presume, in the absence of evidence to the contrary, that the following interests satisfy this criterion for exemption from the specific approval requirements in paragraphs (i)(1) and (2) of this section:

(A) Where the petitioning applicant or licensee, controlling U.S. parent, or entity holding a direct or indirect equity and/or voting interest in the applicant/licensee or U.S. parent is a ''public company,'' as defined in §1.5000(d)(9), *provided that* the foreign holder is an institutional investor that is eligible to report its beneficial ownership interests in the company's voting, equity securities in excess of 5 percent (not to exceed 10 percent) pursuant to Exchange Act Rule 13d–1(b), 17 CFR 240.13d–1(b), or a substantially comparable foreign law or regulation. This presumption shall not apply if the foreign individual, entity or group holding such interests is obligated to report its holdings in the company pursuant to Exchange Act Rule 13d–1(a), 17 CFR 240.13d–1(a), or a substantially comparable foreign law or regulation.

Example. Common carrier applicant (''Applicant'') is preparing a petition for declaratory ruling to request Commission approval for foreign ownership of its controlling, U.S.-organized parent (''U.S. Parent'') to exceed the 25 percent benchmark in section 310(b)(4) of the Act. Applicant does not currently hold any FCC licenses. Shares of U.S. Parent trade publicly on the New York Stock Exchange. Based on a review of its shareholder records, U.S. Parent has determined that its aggregate foreign ownership on any given day may exceed an aggregate 25 percent, including a 6 percent common stock interest held by a foreign-organized mutual fund (''Foreign Fund''). U.S. Parent has confirmed that Foreign Fund is not currently required to report its interest pursuant to Exchange Act Rule 13d–1(a) and instead is eligible to report its interest pursuant to Exchange Act Rule 13d–1(b). U.S. Parent also has confirmed that Foreign Fund does not hold any other interests in U.S. Parent's equity securities, whether of a class of voting or non-voting securities. Applicant may, but is not required to, request specific approval of Foreign Fund's 6 percent interest in U.S. Parent.

NOTE TO PARAGRAPH (i)(3)(ii)(A): Where an institutional investor holds voting, equity securities that are subject to reporting under Exchange Act Rule 13d–1, 17 CFR 240.13d–1, or a substantially comparable foreign law or regulation, in addition to equity securities that are not subject to such reporting, the investor's total capital stock interests may be aggregated and treated as exempt from the 5 percent specific approval requirement in paragraphs (i)(1) and (2) of this section so long as the aggregate amount of the institutional investor's holdings does not exceed 10 percent of the company's total capital stock or voting rights and the investor is eligible to certify under Exchange Act Rule 13d–1(b), 17 CFR 240.13d–1(b), or a substantially comparable foreign law or regulation that it has acquired its capital stock interests in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the company. In calculating foreign equity and voting interests, the Commission does not consider convertible interests such as options, warrants and convertible debentures until converted, unless specifically requested by the petitioner, *i.e.*, where the petitioner is requesting approval so those rights can be exercised in

a particular case without further Commission approval.

(B) Where the petitioning applicant or licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the applicant/licensee or U.S. parent is a ''privately held'' corporation, as defined in §1.5000(d)(8), *provided that* a shareholders' agreement, or similar voting agreement, prohibits the foreign holder from becoming actively involved in the management or operation of the corporation and limits the foreign holder's voting and consent rights, if any, to the minority shareholder protections listed in paragraph (i)(5) of this section.

(C) Where the petitioning applicant or licensee, controlling U.S. parent, or entity holding a direct and/or indirect equity and/or voting interest in the licensee or U.S. parent is ''privately held,'' as defined in §1.5000(d)(8), and is organized as a limited partnership, limited liability company (''LLC''), or limited liability partnership (''LLP''), *provided that* the foreign holder is ''insulated'' in accordance with the criteria specified in §1.5003.

NOTE 1 TO PARAGRAPH (i)(3)(ii)(C): For purposes of identifying foreign interests that require specific approval, where the petitioning applicant, licensee, or controlling U.S. parent *is itself* organized as a partnership or LLC, a general partner, uninsulated limited partner, uninsulated LLC member, and non-member LLC manager shall be deemed to hold a controlling (100 percent) voting interest in the applicant, licensee, or controlling U.S. parent.

NOTE 2 TO PARAGRAPH (i)(3)(ii)(C): For purposes of identifying foreign interests that require specific approval, where interests are held *indirectly* in the petitioning applicant, licensee, or controlling U.S. parent through one or more intervening partnerships or LLCs, a general partner, uninsulated limited partner, uninsulated LLC members, and non-member LLC managers shall be deemed to hold the same *voting* interest as the partnership or LLC holds in the company situated in the next lower tier of the petitioner's vertical ownership chain and, ultimately, the same *voting* interest as the partnership or LLC is calculated as holding in the controlling U.S. parent (for petitions filed under §1.5000(a)(1)) or in the applicant or licensee (for petitions filed under §1.5000(a)(2)). *See* §1.5002(b)(2)(ii)(A) and (b)(2)(iii)(A). Where a limited partner or LLC member is insulated, the limited partner's or LLC member's voting interest in the controlling U.S. parent (for petitions filed under §1.5000(a)(1)), or in the applicant or licensee (for petitions filed under §1.5000(a)(2)) is calculated as equal to the limited partner's or LLC member's equity interest in the U.S. parent or in the applicant or licensee, respectively. *See* §1.5002(b)(2)(ii)(B) and (b)(2)(iii)(B). Thus, depending on the particular ownership structure presented in the petition, a foreign general partner, uninsulated limited partner, LLC member, or non-member LLC manager of an intervening partnership or LLC may be deemed to hold an indirect *voting* interest in the controlling U.S. parent or in the petitioning applicant or licensee that requires specific approval because the *voting* interest exceeds the 5 percent amount specified in paragraphs (i)(1) and (2) of this section and, unless the voting interest is otherwise insulated at a lower tier of the petitioner's vertical ownership chain, the voting interest would not qualify as exempt from specific approval under this paragraph (i)(3)(ii)(C) even in circumstances where the voting interest does not exceed 10 percent.

(4) A petitioner may, but is not required to, request specific approval for any other foreign individual or entity that holds, or would hold, a direct and/or indirect equity and/or voting interest in the controlling U.S. parent (for petitions filed under §1.5000(a)(1)) or in the petitioning applicant or licensee (for petitions filed under §1.5000(a)(2)).

(5) The minority shareholder protections referenced in paragraph (i)(3)(ii)(B) of this section consist of the following rights:

(i) The power to prevent the sale or pledge of all or substantially all of the assets of the corporation or a voluntary filing for bankruptcy or liquidation;

(ii) The power to prevent the corporation from entering into contracts with majority shareholders or their affiliates;

(iii) The power to prevent the corporation from guaranteeing the obligations of majority shareholders or their affiliates;

(iv) The power to purchase an additional interest in the corporation to prevent the dilution of the shareholder's *pro rata* interest in the event that the corporation issues additional instruments conveying shares in the company;

(v) The power to prevent the change of existing legal rights or preferences of the shareholders, as provided in the

charter, by-laws or other operative governance documents;

(vi) The power to prevent the amendment of the charter, by-laws or other operative governance documents of the company with respect to the matters described in paragraph (i)(5)(i) through (v) of this section.

(6) The Commission reserves the right to consider, on a case-by-case basis, whether voting or consent rights over matters other than those listed in paragraph (i)(5) of this section shall be considered permissible minority shareholder protections in a particular case.

(j) For each foreign individual or entity named in response to paragraph (i) of this section, provide the following information:

(1) In the case of an individual, his or her citizenship and principal business(es);

(2) In the case of a business organization:

(i) Its place of organization, type of business organization (e.g., corporation, unincorporated association, trust, general partnership, limited partnership, limited liability company, trust, other (include description of legal entity)), and principal business(es);

(ii)(A) For common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees, the name of any individual or entity that holds, or would hold, directly and/or indirectly, through one or more intervening entities, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the foreign entity for which the petitioner requests specific approval. Specify for each such interest holder, his or her citizenship (for individuals) or place of legal organization (for entities). Equity interests and voting interests held indirectly shall be calculated in accordance with the principles set forth in § 1.5002.

(B) For broadcast applicants and licensees, the name of any individual or entity that holds, or would hold, directly and/or indirectly, through one or more intervening entities, an attributable interest in the foreign entity for which the petitioner requests specific approval. Specify for each such interest holder, his or her citizenship (for individuals) or place of legal organization (for entities). Attributable interests shall be calculated in accordance with the principles set forth in the Notes to § 73.3555 of this chapter.

(iii)(A) For common carrier, aeronautical en route, and aeronautical fixed radio station applicants and licensees, where no individual or entity holds, or would hold, directly and/or indirectly, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, the petition shall specify that no individual or entity holds, or would hold, directly and/or indirectly, 10 percent or more of the equity interests and/or voting interests, or a controlling interest, in the foreign entity for which the petitioner requests specific approval.

(B) For broadcast applicants and licensees, where no individual or entity holds, or would hold, directly and/or indirectly, an attributable interest in the foreign entity, the petition shall specify that no individual or entity holds, or would hold, directly and/or indirectly, an attributable interest in the foreign entity for which the petitioner requests specific approval.

(k) *Requests for advance approval.* The petitioner may, but is not required to, request advance approval in its petition for any foreign individual or entity named in response to paragraph (i) of this section to increase its direct and/or indirect equity and/or voting interests in the controlling U.S. parent of the broadcast, common carrier or aeronautical radio station licensee, for petitions filed under § 1.5000(a)(1), and/or in the common carrier licensee, for petitions filed under § 1.5000(a)(2), above the percentages specified in response to paragraph (i) of this section. Requests for advance approval shall be made as follows:

(1) *Petitions filed under § 1.5000(a)(1).* Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a *de jure* or *de facto* controlling interest in the controlling U.S. parent, the petitioner may request advance approval in its petition for the foreign individual or entity to increase its interests, at some

future time, up to any amount, including 100 percent of the direct and/or indirect equity and/or voting interests in the U.S. parent. The petitioner shall specify for the named controlling foreign individual(s) or entity(ies) the maximum percentages of equity and/or voting interests for which advance approval is sought or, in lieu of a specific amount, state that the petitioner requests advance approval for the named controlling foreign individual or entity to increase its interests up to and including 100 percent of the U.S. parent's direct and/or indirect equity and/or voting interests.

(2) *Petitions filed under § 1.5000(a)(1) and/or (2).* Where a foreign individual or entity named in response to paragraph (i) of this section holds, or would hold upon consummation of any transactions described in the petition, a non-controlling interest in the controlling U.S. parent of the licensee, for petitions filed under § 1.5000(a)(1), or in the licensee, for petitions filed under § 1.5000(a)(2), the petitioner may request advance approval in its petition for the foreign individual or entity to increase its interests, at some future time, up to any non-controlling amount not to exceed 49.99 percent. The petitioner shall specify for the named foreign individual(s) or entity(ies) the maximum percentages of equity and/or voting interests for which advance approval is sought or, in lieu of a specific amount, shall state that the petitioner requests advance approval for the named foreign individual(s) or entity(ies) to increase their interests up to and including a non-controlling 49.99 percent equity and/or voting interest in the licensee, for petitions filed under § 1.5000(a)(2), or in the controlling U.S. parent of the licensee, for petitions filed under § 1.5000(a)(1).

(l) Each applicant, licensee, or spectrum lessee filing a petition for declaratory ruling shall certify to the information contained in the petition in accordance with the provisions of § 1.16 and the requirements of § 1.5000(c)(1).

EFFECTIVE DATE NOTE: At 85 FR 76382, Nov. 27, 2020, § 1.5001 was amended by adding paragraphs (m) and (n). This action was delayed indefinitely. For the convenience of the user, the added text is set forth as follows:

§ 1.5001 Contents of petitions for declaratory ruling under section 310(b) of the Communications Act of 1934, as amended.

* * * * *

(m) *Submission of petition and responses to standard questions to the Committee for the assessment of foreign participation in the United States telecommunications services sector.* For each petition subject to a referral to the executive branch pursuant to § 1.40001, the petitioner must submit:

(1) Responses to standard questions, prior to or at the same time the petitioner files its petition with the Commission, pursuant to subpart CC of this part, directly to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee). The standard questions and instructions for submitting the responses are available on the FCC website. The required information shall be submitted separately from the petition and shall be submitted directly to the Committee.

(2) A complete and unredacted copy of its FCC petition(s), including the file number(s) and docket number(s), to the Committee within three (3) business days of filing it with the Commission. The instructions for submitting a copy of the FCC petition(s) to the Committee are available on the FCC website.

(n) *Certifications.* (1) Broadcast applicants and licensees shall make the following certifications by which they agree:

(i) To designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;

(ii)(A) That the petitioner is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the petition or subsequently in response to either the Commission or the Committee's request, as required in § 1.65(a), and that the petitioner agrees to inform the Commission and the Committee of any substantial and significant changes while a petition is pending; and

(B) After the petition is no longer pending for purposes of § 1.65, the petitioner must notify the Commission and the Committee of any changes in petitioner information and/or contact information promptly, and in any event within thirty (30) days; and

(iii) That the petitioner understands that if the petitioner or an applicant or licensee covered by the declaratory ruling fails to fulfill any of the conditions and obligations in the certifications set out in paragraph (n)(1) of this section or in the grant of an application, petition, license, or authorization associated with the declaratory ruling and/or that if the information provided to the

United States Government is materially false, fictitious, or fraudulent, the petitioner, applicants, and licensees may be subject to all remedies available to the United States Government, including but not limited to revocation and/or termination of the Commission's declaratory ruling, authorization or license, and criminal and civil penalties, including penalties under 18 U.S.C. 1001.

(2) Common carrier applicants, licensees, or spectrum lessees shall make the following certifications by which they agree:

(i) To comply with all applicable Communications Assistance for Law Enforcement Act (CALEA) requirements and related rules and regulations, including any and all FCC orders and opinions governing the application of CALEA, pursuant to the Communications Assistance for Law Enforcement Act and the Commission's rules and regulations in subpart Z of this part;

(ii) To make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law, including but not limited to:

(A) The Wiretap Act, 18 U.S.C. 2510 *et seq.;*

(B) The Stored Communications Act, 18 U.S.C. 2701 *et seq.;*

(C) The Pen Register and Trap and Trace Statute, 18 U.S.C. 3121 *et seq.;* and

(D) Other court orders, subpoenas, or other legal process;

(iii) To designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;

(iv)(A) That the petitioner is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the petition or subsequently in response to either the Commission or the Committee's request, as required in §1.65(a), and that the petitioner agrees to inform the Commission and the Committee of any substantial and significant changes while a petition is pending; and

(B) After the petition is no longer pending for purposes of §1.65 of the rules, the petitioner must notify the Commission and the Committee of any changes in petitioner informationand/or contact information promptly, and in any event within thirty (30) days; and

(v) That the petitioner understands that if the petitioner or an applicant or licensee covered by the declaratory ruling fails to fulfill any of the conditions and obligations set forth in the certifications set out in paragraph (n)(2) of this section or in the grant of an application, petition, license, or authorization associated with this declaratory ruling and/or that if the information provided to the United States Government is materially false, fictitious, or fraudulent, the petitioner, applicants, and licensees may be subject to all remedies available to the United States Government, including but not limited to revocation and/or termination of the Commission's declaratory ruling, authorization or license, and criminal and civil penalties, including penalties under 18 U.S.C. 1001.

§1.5002 How to calculate indirect equity and voting interests.

(a) The criteria specified in this section shall be used for purposes of calculating indirect equity and voting interests under §1.5001.

(b)(1) *Equity interests held indirectly in the licensee and/or controlling U.S. parent.* Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier.

Example (for rulings issued under §1.5000(a)(1)). Assume that a foreign individual holds a non-controlling 30 percent equity and voting interest in U.S.-organized Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in U.S.-organized Parent Corporation B. The foreign individual's equity interest in U.S.-organized Parent Corporation B would be calculated by multiplying the foreign individual's equity interest in U.S.-organized Corporation A by that entity's equity interest in U.S.-organized Parent Corporation B. The foreign individual's equity interest in U.S.-organized Parent Corporation B would be calculated as 12 percent (30% × 40% = 12%). The result would be the same even if U.S.-organized Corporation A held a *de facto* controlling interest in U.S.-organized Parent Corporation B.

(2) *Voting interests held indirectly in the licensee and/or controlling U.S. parent.* Voting interests that are held by any individual or entity indirectly through one or more intervening entities will be determined depending upon the type of business organization(s) in which the individual or entity holds a voting interest as follows:

(i) Voting interests that are held through one or more intervening corporations shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example (for rulings issued under §1.5000(a)(1)). Assume that a foreign individual holds a non-controlling 30 percent equity and voting interest in U.S.-organized Corporation A which, in turn, holds a *controlling* 70 percent equity and voting interest in U.S.-organized Parent Corporation B. Because U.S.-organized Corporation A's 70 percent voting interest in U.S.-organized Parent Corporation B constitutes a *controlling* interest, it is treated as a 100 percent interest. The foreign individual's 30 percent voting interest in U.S.-organized Corporation A would flow through in its entirety to U.S. Parent Corporation B and thus be calculated as 30 percent (30% × 100% = 30%).

(ii) Voting interests that are held through one or more intervening partnerships shall be calculated depending upon whether the individual or entity holds a general partnership interest, an uninsulated partnership interest, or an insulated partnership interest as specified in paragraphs (b)(2)(ii)(A) and (B) of this section.

(A) *General partnership and other uninsulated partnership interests*. A general partner and uninsulated partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner shall be treated as uninsulated unless the limited partnership agreement, limited liability partnership agreement, or other operative agreement satisfies the insulation criteria specified in §1.5003.

(B) *Insulated partnership interests*. A partner of a limited partnership (other than a general partner) or partner of a limited liability partnership that satisfies the insulation criteria specified in §1.5003 shall be treated as an insulated partner and shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest.

NOTE TO PARAGRAPH (b)(2)(ii): The Commission presumes that a general partner of a general partnership or limited partnership has a controlling interest in the partnership. A general partner shall in all cases be deemed to hold an uninsulated interest in the partnership.

(iii) Voting interests that are held through one or more intervening limited liability companies shall be calculated depending upon whether the individual or entity is a non-member manager, an uninsulated member or an insulated member as specified in paragraphs (b)(2)(iii)(A) and (B) of this section.

(A) *Non-member managers and uninsulated membership interests*. A non-member manager and an uninsulated member of a limited liability company shall be deemed to hold the same voting interest as the limited liability company holds in the company situated in the next lower tier of the vertical ownership chain. A member shall be treated as uninsulated unless the limited liability company agreement satisfies the insulation criteria specified in §1.5003.

(B) *Insulated membership interests*. A member of a limited liability company that satisfies the insulation criteria specified in §1.5003 shall be treated as an insulated member and shall be deemed to hold a voting interest in the limited liability company that is equal to the member's equity interest.

§1.5003 Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.

(a) A limited partner of a limited partnership and a partner of a limited liability partnership shall be treated as uninsulated within the meaning of §1.5002(b)(2)(ii)(A) unless the partner is prohibited by the limited partnership agreement, limited liability partnership agreement, or other operative agreement from, and in fact is not engaged in, active involvement in the management or operation of the partnership and only the usual and customary investor protections are contained in the partnership agreement or other operative agreement. These criteria apply to any relevant limited partnership or limited liability partnership, whether it is the licensee, a

controlling U.S.-organized parent, or any partnership situated above them in the vertical chain of ownership. Notwithstanding the foregoing, the insulation of limited partnership and limited liability partnership interests for broadcast applicants and licensees *shall* be determined in accordance with Note 2(f) of § 73.3555 of this chapter.

(b) A member of a limited liability company shall be treated as uninsulated for purposes of § 1.5002(b)(2)(iii)(A) unless the member is prohibited by the limited liability company agreement from, and in fact is not engaged in, active involvement in the management or operation of the company and only the usual and customary investor protections are contained in the agreement. These criteria apply to any relevant limited liability company, whether it is the licensee, a controlling U.S.-organized parent, or any limited liability company situated above them in the vertical chain of ownership. Notwithstanding the foregoing, the insulation of limited liability company interests for broadcast applicants and licensees *shall* be determined in accordance with Note 2(f) of § 73.3555 of this chapter.

(c) The usual and customary investor protections referred to in paragraphs (a) and (b) of this section shall consist of:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of the limited partnership, limited liability partnership, or limited liability company or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent the limited partnership, limited liability partnership, or limited liability company from entering into contracts with majority investors or their affiliates;

(3) The power to prevent the limited partnership, limited liability partnership, or limited liability company from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in the limited partnership, limited liability partnership, or limited liability company to prevent the dilution of the partner's or member's *pro rata* interest in the event that the limited partnership, limited liability partnership, or limited liability company issues additional instruments conveying interests in the partnership or company;

(5) The power to prevent the change of existing legal rights or preferences of the partners, members, or managers as provided in the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other operative agreement;

(6) The power to vote on the removal of a general partner, managing partner, managing member, or other manager in situations where such individual or entity is subject to bankruptcy, insolvency, reorganization, or other proceedings relating to the relief of debtors; adjudicated insane or incompetent by a court of competent jurisdiction (in the case of a natural person); convicted of a felony; or otherwise removed for cause, as determined by an independent party;

(7) The power to prevent the amendment of the limited partnership agreement, limited liability partnership agreement, or limited liability company agreement, or other organizational documents of the partnership or limited liability company with respect to the matters described in paragraph (c)(1) through (c)(6) of this section.

(d) The Commission reserves the right to consider, on a case-by-case basis, whether voting or consent rights over matters other than those listed in paragraph (c) of this section shall be considered usual and customary investor protections in a particular case.

§ 1.5004 Routine terms and conditions.

Foreign ownership rulings issued pursuant to §§ 1.5000 through 1.5004 shall be subject to the following terms and conditions, except as otherwise specified in a particular ruling:

(a)(1) *Aggregate allowance for rulings issued under § 1.5000(a)(1).* In addition to the foreign ownership interests approved specifically in a licensee's declaratory ruling issued pursuant to § 1.5000(a)(1), the controlling U.S.-organized parent named in the ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) may be 100 percent owned, directly and/or indirectly through one or

more U.S- or foreign-organized entities, on a going-forward basis (*i.e.*, after issuance of the ruling) by other foreign investors without prior Commission approval. This ''100 percent aggregate allowance'' is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or ''group'' not previously approved acquires, directly and/or indirectly, more than 5 percent of the U.S. parent's outstanding capital stock (equity) and/or voting stock, or a controlling interest, with the exception of any foreign individual, entity, or ''group'' that acquires an equity and/or voting interest of 10 percent or less, *provided that* the interest is exempt under §1.5001(i)(3).

(2) *Aggregate allowance for rulings issued under §1.5000(a)(2).* In addition to the foreign ownership interests approved specifically in a licensee's declaratory ruling issued pursuant to §1.5000(a)(2), the licensee(s) named in the ruling (or a U.S.-organized successor-in-interest formed as part of a *pro forma* reorganization) may be 100 percent owned on a going forward basis (*i.e.*, after issuance of the ruling) by other foreign investors holding interests in the licensee indirectly through U.S.-organized entities that do not control the licensee, without prior Commission approval. This ''100 percent aggregate allowance'' is subject to the requirement that the licensee seek and obtain Commission approval before any foreign individual, entity, or ''group'' not previously approved acquires directly and/or indirectly, through one or more U.S.-organized entities that do not control the licensee, more than 5 percent of the licensee's outstanding capital stock (equity) and/or voting stock, with the exception of any foreign individual, entity, or ''group'' that acquires an equity and/or voting interest of 10 percent or less, *provided that* the interest is exempt under §1.5001(i)(3). Foreign ownership interests held directly in a licensee shall not be permitted to exceed an aggregate 20 percent of the licensee's equity and/or voting interests.

NOTE TO PARAGRAPH (a): Licensees have an obligation to monitor and stay ahead of changes in foreign ownership of their controlling U.S.-organized parent companies (for rulings issued pursuant to §1.5000(a)(1)) and/or in the licensee itself (for rulings issued pursuant to §1.5000(a)(2)), to ensure that the licensee obtains Commission approval before a change in foreign ownership renders the licensee out of compliance with the terms and conditions of its declaratory ruling(s) or the Commission's rules. Licensees, their controlling parent companies, and other entities in the licensee's vertical ownership chain may need to place restrictions in their bylaws or other organizational documents to enable the licensee to ensure compliance with the terms and conditions of its declaratory ruling(s) and the Commission's rules.

Example 1 (for rulings issued under §1.5000(a)(1)). U.S. Corp. files an application for a common carrier license. U.S. Corp. is wholly owned and controlled by U.S. Parent, which is a newly formed, privately held Delaware Corporation in which no single shareholder has *de jure* or *de facto* control. A shareholder's agreement provides that a five-member board of directors shall govern the affairs of the company; five named shareholders shall be entitled to one seat and one vote on the board; and all decisions of the board shall be determined by majority vote. The five named shareholders and their respective equity interests are as follows: Foreign Entity A, which is wholly owned and controlled by a foreign citizen (5 percent); Foreign Entity B, which is wholly owned and controlled by a foreign citizen (10 percent); Foreign Entity C, a foreign public company with no controlling shareholder (20 percent); Foreign Entity D, a foreign pension fund that is controlled by a foreign citizen and in which no individual or entity has a pecuniary interest exceeding one percent (21 percent); and U.S. Entity E, a U.S. public company with no controlling shareholder (25 percent). The remaining 19 percent of U.S. Parent's shares are held by three foreign-organized entities as follows: F (4 percent), G (6 percent), and H (9 percent). Under the shareholders' agreement, voting rights of F, G, and H are limited to the minority shareholder protections listed in §1.5001(i)(5). Further, the agreement expressly prohibits G and H from becoming actively involved in the management or operation of U.S. Parent and U.S. Corp.

As required by the rules, U.S. Corp. files a section 310(b)(4) petition concurrently with its application. The petition identifies and requests specific approval for the ownership interests held in U.S. Parent by Foreign Entity A and its sole shareholder (5 percent equity and 20 percent voting interest); Foreign Entity B and its sole shareholder (10 percent equity and 20 percent voting interest), Foreign Entity C (20 percent equity and 20 percent voting interest), and Foreign Entity D

(21 percent equity and 20 percent voting interest) and its fund manager (20 percent voting interest). The Commission's ruling specifically approves these foreign interests. The ruling also provides that, on a going-forward basis, U.S. Parent may be 100 percent owned in the aggregate, directly and/or indirectly, by other foreign investors, subject to the requirement that U.S. Corp. seek and obtain Commission approval before any previously unapproved foreign investor acquires more than 5 percent of U.S. Parent's equity and/or voting interests, or a controlling interest, with the exception of any foreign investor that acquires an equity and/or voting interest of ten percent or less, *provided that* the interest is exempt under §1.991(i)(3).

In this case, foreign entities F, G, and H would each be considered a previously unapproved foreign investor (along with any new foreign investors). However, prior approval for F, G and H would only apply to an increase of F's interest above 5 percent (because the ten percent exemption under §1.5001(i)(3) does not apply to F) or to an increase of G's or H's interest above 10 percent (because G and H do qualify for this exemption). U.S. Corp. would also need Commission approval before Foreign Entity D appoints a new fund manager that is a non-U.S. citizen and before Foreign Entities A, B, C, or D increase their respective equity and/or voting interests in U.S. Parent, unless the petition previously sought and obtained Commission approval for such increases (up to non-controlling 49.99 percent interests). (*See* §1.5001(k)(2).) Foreign shareholders of Foreign Entity C and U.S. Entity E would also be considered previously unapproved foreign investors. Thus, Commission approval would be required before any foreign shareholder of Foreign Entity C or U.S. Entity E acquires (1) a controlling interest in either company; or (2) a non-controlling equity and/or voting interest in either company that, when multiplied by the company's equity and/or voting interests in U.S. Parent, would exceed 5 percent of U.S. Parent's equity and/or voting interests, unless the interest is exempt under §1.5001(i)(3).

Example 2 (for rulings issued under §1.5000(a)(2)). Assume that the following three U.S.-organized entities hold non-controlling equity and voting interests in common carrier Licensee, which is a privately held corporation organized in Delaware: U.S. corporation A (30 percent); U.S. corporation B (30 percent); and U.S. corporation C (40 percent). Licensee's shareholders are wholly owned by foreign individuals X, Y, and Z, respectively. Licensee has received a declaratory ruling under §1.5000(a)(2) specifically approving the 30 percent foreign ownership interests held in Licensee by each of X and Y (through U.S. corporation A and U.S. corporation B, respectively) and the 40 percent foreign ownership interest held in Licensee by Z (through U.S. corporation C). On a going-forward basis, Licensee may be 100 percent owned in the aggregate by X, Y, Z, and other foreign investors holding interests in Licensee indirectly, through U.S.-organized entities that do not control Licensee, subject to the requirement that Licensee obtain Commission approval before any previously unapproved foreign investor acquires more than 5 percent of Licensee's equity and/or voting interests, with the exception of any foreign investor that acquires an equity and/or voting interest of 10 percent or less, *provided that* the interest is exempt under §1.5001(i)(3). In this case, any foreign investor other than X, Y, and Z would be considered a previously unapproved foreign investor. Licensee would also need Commission approval before X, Y, or Z increases its equity and/or voting interests in Licensee unless the petition previously sought and obtained Commission approval for such increases (up to non-controlling 49.99 percent interests). (*See* §1.5001(k)(2).)

(b) *Subsidiaries and affiliates*. A foreign ownership ruling issued to a licensee shall cover it *and* any U.S.-organized subsidiary or affiliate, as defined in §1.5000(d), whether the subsidiary or affiliate existed at the time the ruling was issued or was formed or acquired subsequently, *provided that* the foreign ownership of the licensee named in the ruling, and of the subsidiary and/or affiliate, remains in compliance with the terms and conditions of the licensee's ruling and the Commission's rules.

(1) The subsidiary or affiliate of a licensee named in a foreign ownership ruling issued under §1.5000(a)(1) may rely on that ruling for purposes of filing its own application for an initial broadcast, common carrier or aeronautical license or spectrum leasing arrangement, or an application to acquire such license or spectrum leasing arrangement by assignment or transfer of control *provided that* the subsidiary or affiliate, and the licensee named in the ruling, each certifies in the application that its foreign ownership is in compliance with the terms and conditions of the foreign ownership ruling and the Commission's rules.

(2) The subsidiary or affiliate of a licensee named in a foreign ownership ruling issued under §1.5000(a)(2) may rely on that ruling for purposes of filing its own application for an initial common carrier radio station license or spectrum leasing arrangement, or an

application to acquire such license or spectrum leasing arrangement by assignment or transfer of control *provided that* the subsidiary or affiliate, and the licensee named in the ruling, each certifies in the application that its foreign ownership is in compliance with the terms and conditions of the foreign ownership ruling and the Commission's rules.

(3) The certifications required by paragraphs (b)(1) and (2) of this section shall also include the citation(s) of the relevant ruling(s) (*i.e.*, the DA or FCC Number, FCC Record citation when available, and release date).

(c) *Insertion of new controlling foreign-organized companies.* (1) Where a licensee's foreign ownership ruling specifically authorizes a named, foreign investor to hold a controlling interest in the licensee's controlling U.S.-organized parent, for rulings issued under §1.5000(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for rulings issued under §1.5000(a)(2), the ruling shall permit the insertion of new, controlling foreign-organized companies in the vertical ownership chain above the controlling U.S. parent, for rulings issued under §1.5000(a)(1), or above an intervening U.S.-organized entity that does not control the licensee, for rulings issued under §1.5000(a)(2), without prior Commission approval *provided that* any new foreign-organized company(ies) are under 100 percent common ownership and control with the foreign investor approved in the ruling.

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (c)(1) of this section, the licensee shall file a letter to the attention of the Chief, International Bureau, within 30 days after the insertion of the new, foreign-organized entity. The letter must include the name of the new, foreign-organized entity and a certification by the licensee that the entity complies with the 100 percent common ownership and control requirement in paragraph (c)(1) of this section. The letter must also reference the licensee's foreign ownership ruling(s) by IBFS File No. and FCC Record citation, if available. This letter notification need not be filed if the ownership change is instead the subject of a *pro forma* application or *pro forma* notification already filed with the Commission pursuant to the relevant broadcast service rules, wireless radio service rules or satellite radio service rules applicable to the licensee.

NOTE TO PARAGRAPH (c)(2): For broadcast stations, in order to insert a previously unapproved foreign-organized entity that is under 100 percent common ownership and control with the foreign investor approved in the ruling into the vertical ownership chain of the licensee's controlling U.S.-organized parent, as described in paragraph (c)(1) of this section, the licensee must always file a *pro forma* application requesting prior consent of the FCC pursuant to section 73.3540(f) of this chapter.

(3) Nothing in this section is intended to affect any requirements for prior approval under 47 U.S.C. 310(d) or conditions for forbearance from the requirements of 47 U.S.C. 310(d) pursuant to 47 U.S.C. 160.

Example (for rulings issued under §1.5000(a)(1)). Licensee of a common carrier license receives a foreign ownership ruling under §1.5000(a)(1) that authorizes its controlling, U.S.-organized parent (''U.S. Parent A'') to be wholly owned and controlled by a foreign-organized company (''Foreign Company''). Foreign Company is minority owned (20 percent) by U.S.-organized Corporation B, with the remaining 80 percent controlling interest held by Foreign Citizen C. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary (''Foreign Subsidiary'') to hold all of Foreign Company's shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Parent A would not require prior Commission approval, except for any approval otherwise required pursuant to section 310(d) of the Communications Act and not exempt therefrom as a *pro forma* transfer of control under §1.948(c)(1).

Example (for rulings issued under §1.5000(a)(2)). An applicant for a common carrier license receives a foreign ownership ruling under §1.5000(a)(2) that authorizes a foreign-organized company (''Foreign Company'') to hold a non-controlling 44 percent equity and voting interest in the applicant through Foreign Company's wholly-owned, U.S.-organized subsidiary, U.S. Corporation

A, which holds the non-controlling 44 percent interest directly in the applicant. The remaining 56 percent of the applicant's equity and voting interests are held by its controlling U.S.-organized parent, which has no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary to hold all of Foreign Company's shares in U.S. Corporation A. There are no other changes in the direct or indirect foreign ownership of U.S. Corporation A. The insertion of the foreign-organized subsidiary into the vertical ownership chain between Foreign Company and U.S. Corporation A would not require prior Commission approval.

(d) *Insertion of new non-controlling foreign-organized companies*. (1) Where a licensee's foreign ownership ruling specifically authorizes a named, foreign investor to hold a non-controlling interest in the licensee's controlling U.S.-organized parent, for rulings issued under §1.5000(a)(1), or in an intervening U.S.-organized entity that does not control the licensee, for rulings issued under §1.5000(a)(2), the ruling shall permit the insertion of new, foreign-organized companies in the vertical ownership chain above the controlling U.S. parent, for rulings issued under §1.5000(a)(1), or above an intervening U.S.-organized entity that does not control the licensee, for rulings issued under §1.5000(a)(2), without prior Commission approval *provided that* any new foreign-organized company(ies) are under 100 percent common ownership and control with the foreign investor approved in the ruling.

NOTE TO PARAGRAPH (d)(1): Where a licensee has received a foreign ownership ruling under §1.5000(a)(2) and the ruling specifically authorizes a named, foreign investor to hold a non-controlling interest directly in the licensee (subject to the 20 percent aggregate limit on direct foreign investment), the ruling shall permit the insertion of new, foreign-organized companies in the vertical ownership chain of the approved foreign investor without prior Commission approval *provided that* any new foreign-organized companies are under 100 percent common ownership and control with the approved foreign investor.

Example (for rulings issued under §1.5000(a)(1)). Licensee receives a foreign ownership ruling under §1.5000(a)(1) that authorizes a foreign-organized company (''Foreign Company'') to hold a non-controlling 30 percent equity and voting interest in Licensee's controlling, U.S.-organized parent (''U.S. Parent A''). The remaining 70 percent equity and voting interests in U.S. Parent A are held by U.S.-organized entities which have no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary (''Foreign Subsidiary'') to hold all of Foreign Company's shares in U.S. Parent A. There are no other changes in the direct or indirect foreign ownership of U.S. Parent A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Parent A would not require prior Commission approval.

Example (for rulings issued under §1.5000(a)(2)). Licensee receives a foreign ownership ruling under §1.5000(a)(2) that authorizes a foreign-organized entity (''Foreign Company'') to hold approximately 24 percent of Licensee's equity and voting interests, through Foreign Company's non-controlling 48 percent equity and voting interest in a U.S.-organized entity, U.S. Corporation A, which holds a non-controlling 49 percent equity and voting interest directly in Licensee. (A U.S. citizen holds the remaining 52 percent equity and voting interests in U.S. Corporation A, and the remaining 51 percent equity and voting interests in Licensee are held by its U.S.-organized parent, which has no foreign ownership. After issuance of the ruling, Foreign Company forms a wholly-owned, foreign-organized subsidiary (''Foreign Subsidiary'') to hold all of Foreign Company's shares in U.S. Corporation A. There are no other changes in the direct or indirect foreign ownership of U.S. Corporation A. The insertion of Foreign Subsidiary into the vertical ownership chain between Foreign Company and U.S. Corporation A would not require prior Commission approval.

(2) Where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval pursuant to paragraph (d)(1) of this section, the licensee shall file a letter to the attention of the Chief, International Bureau, within 30 days after the insertion of the new, foreign-organized entity; or in the case of a broadcast licensee, the licensee shall file a letter to the attention of the Chief, Media Bureau, within 30 days after the insertion of the new, foreign-organized entity. The letter must include the name of the new, foreign-organized entity and a certification by the licensee that the entity complies with the 100 percent common ownership and control requirement in paragraph (d)(1) of this section. The letter

must also reference the licensee's foreign ownership ruling(s) by IBFS File No. and FCC Record citation, if available; or, if a broadcast licensee, the letter must reference the licensee's foreign ownership ruling(s) by CDBS File No., Docket No., call sign(s), facility identification number(s), and FCC Record citation, if available. This letter notification need not be filed if the ownership change is instead the subject of a *pro forma* application or *pro forma* notification already filed with the Commission pursuant to the relevant broadcast service, wireless radio service rules or satellite radio service rules applicable to the licensee.

(e) *New petition for declaratory ruling required.* A licensee that has received a foreign ownership ruling, including a U.S.-organized successor-in-interest to such licensee formed as part of a *pro forma* reorganization, or any subsidiary or affiliate relying on such licensee's ruling pursuant to paragraph (b) of this section, shall file a new petition for declaratory ruling under § 1.5000 to obtain Commission approval *before* its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms or conditions of its ruling.

(f) *Continuing compliance.* (1) Except as specified in paragraph (f)(3) of this section, if at any time the licensee, including any successor-in-interest and any subsidiary or affiliate as described in paragraph (b) of this section, knows, or has reason to know, that it is no longer in compliance with its foreign ownership ruling or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance therewith. Subsequent actions taken by or on behalf of the licensee to remedy its non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance. Such licensee and any controlling companies, whether U.S.- or foreign-organized, shall be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.

(2) Any individual or entity that, directly or indirectly, creates or uses a trust, proxy, power of attorney, or any other contract, arrangement, or device with the purpose or effect of divesting itself, or preventing the vesting, of an equity interest or voting interest in the licensee, or in a controlling U.S. parent company, as part of a plan or scheme to evade the application of the Commission's rules or policies under section 310(b) shall be subject to enforcement action by the Commission, including an order requiring divestiture of the investor's direct and/or indirect interests in such entities.

(3) Where the controlling U.S. parent of a broadcast, common carrier, aeronautical en route, or aeronautical fixed radio station licensee or common carrier spectrum lessee is an eligible U.S. public company within the meaning of § 1.5000(e), the licensee may file a remedial petition for declaratory ruling under § 1.5000(a)(1) seeking approval of particular foreign equity and/or voting interests that are non-compliant with the licensee's foreign ownership ruling or the Commission's rules relating to foreign ownership; or, alternatively, the licensee may remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with the licensee's existing foreign ownership ruling. In either case, the Commission does not expect to take enforcement action related to the non-compliance subject to the requirements specified in paragraphs (f)(3)(i) and (ii) of this section and except as otherwise provided in paragraph (f)(3)(iii) of this section.

(i) The licensee shall notify the relevant Bureau by letter no later than 10 days after learning of the investment(s) that rendered the licensee non-compliant with its foreign ownership ruling or the Commission's rules relating to foreign ownership and specify in the letter that it will file a petition for declaratory ruling under § 1.5000(a)(1) or, alternatively, take remedial action to come into compliance within 30 days of the date it learned of the non-compliant foreign interest(s).

(ii) The licensee shall demonstrate in its petition for declaratory ruling (or

in a letter notifying the relevant Bureau that the non-compliance has been timely remedied) that the licensee's non-compliance with the terms of the licensee's existing foreign ownership ruling or the foreign ownership rules was due solely to circumstances beyond the licensee's control that were not reasonably foreseeable to or known by the licensee with the exercise of the required due diligence.

(iii) Where the licensee has opted to file a petition for declaratory ruling under § 1.5000(a)(1), the Commission will not require that the licensee's U.S. parent redeem the non-compliant foreign interest(s) or take other action to remedy the non-compliance during the pendency of the licensee's petition. If the Commission ultimately declines to approve the petition, however, the licensee must have a mechanism available to come into compliance with the terms of its existing ruling within 30 days following the Commission's decision. The Commission reserves the right to require immediate remedial action by the licensee where the Commission finds in a particular case that the public interest requires such action—for example, where, after consultation with the relevant Executive Branch agencies, the Commission finds that the non-compliant foreign interest presents national security or other significant concerns that require immediate mitigation.

(4) Where a publicly traded common carrier licensee is an eligible U.S. public company within the meaning of § 1.5000(e), the licensee may file a remedial petition for declaratory ruling under § 1.5000(a)(2) seeking approval of particular foreign equity and/or voting interests that are non-compliant with the licensee's foreign ownership ruling or the Commission's rules relating to foreign ownership; or, alternatively, the licensee may remedy the non-compliance by, for example, redeeming the foreign interest(s) that rendered the licensee non-compliant with the licensee's existing foreign ownership ruling. In either case, the Commission does not, as a general rule, expect to take enforcement action related to the non-compliance subject to the requirements specified in paragraphs (f)(3)(i) and (f)(3)(ii) of this section and except as otherwise provided in paragraph (f)(3)(iii) of this section.

NOTE 1 TO PARAGRAPH (f)(4): For purposes of this paragraph, the provisions in paragraphs (f)(3)(i) through (f)(3)(iii) that refer to petitions for declaratory ruling under § 1.5000(a)(1) shall be read as referring to petitions for declaratory ruling under § 1.5000(a)(2).

Subpart U—State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities

SOURCE: 83 FR 51884, Oct. 15, 2018, unless otherwise noted.

§ 1.6001 Purpose.

This subpart implements 47 U.S.C. 332(c)(7) and 1455.

§ 1.6002 Definitions.

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 *et seq*. Terms used in this subpart have the following meanings:

(a) *Action* or *to act* on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(b) *Antenna*, consistent with § 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

(c) *Antenna equipment*, consistent with § 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) *Antenna facility* means an antenna and associated antenna equipment.

(e) *Applicant* means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) *Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) *Collocation*, consistent with §1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—

(1) Mounting or installing an antenna facility on a pre-existing structure; and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(3) The definition of ''collocation'' in §1.6100(b)(2) applies to the term as used in that section.

(h) *Deployment* means placement, construction, or modification of a personal wireless service facility.

(i) *Facility* or *personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a standalone basis or commingled with other wireless communications services.

(j) *Siting application* or *application* means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

(k) *Siting authority* means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(l) *Small wireless facilities* are facilities that meet each of the following conditions:

(1) The facilities—

(i) Are mounted on structures 50 feet or less in height including their antennas as defined in §1.1320(d); or

(ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in §1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §1.1307(b).

(m) *Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

[83 FR 51884, Oct. 15, 2018, as amended at 84 FR 59567, Nov. 5, 2019]

§1.6003 Reasonable periods of time to act on siting applications.

(a) *Timely action required.* A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) *Shot clock period.* The shot clock period for a siting application is the sum of—

(1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

(2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) *Presumptively reasonable periods of time*—(1) *Review periods for individual applications*. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) *Batching*. (i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(d) *Tolling period*. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

(1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(e) *Shot clock date*. The shot clock date for a siting application is determined by counting forward, beginning

on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; *provided*, that if the date calculated in this manner is a ''holiday'' as defined in §1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term ''business day'' means any day as defined in §1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

§ 1.6100 Wireless Facility Modifications.

(a) [Reserved]

(b) *Definitions*. Terms used in this section have the following meanings.

(1) *Base station*. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)–(ii) of this section.

(2) *Collocation*. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) *Eligible facilities request*. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(4) *Eligible support structure*. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

(5) *Existing*. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(6) *Site*. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred

prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

(7) *Substantial change.* A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in §1.40001(b)(7)(i) through (iv).

(8) *Transmission equipment.* Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(9) *Tower.* Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(c) *Review of applications.* A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) *Documentation requirement for review*. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) *Timeframe for review*. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) *Tolling of the timeframe for review*. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) *Failure to act*. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5) *Remedies*. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

[80 FR 1269, Jan. 8, 2015. Redesignated and amended at 83 FR 51886, Oct. 15, 2018; 85 FR 78018, Dec. 3, 2020]

Subpart V—Commission Collection of Advanced Telecommunications Capability Data and Local Exchange Competition Data

SOURCE: 65 FR 19684, Apr. 12, 2000; 65 FR 24654, Apr. 27, 2000, unless otherwise noted.

§ 1.7000 Purpose.

The purposes of this subpart are to set out the terms by which certain commercial and government-controlled entities report data to the Commission concerning:

(a) The provision of wired and wireless local telephone services and interconnected Voice over internet Protocol services;

(b) The deployment of advanced telecommunications capability, as defined in 47 U.S.C. 1302, and services that are competitive with advanced telecommunications capability; and

(c) The availability and quality of service of broadband internet access service.

[85 FR 50907, Aug. 18, 2020]

§ 1.7001 Scope and content of filed reports.

(a) *Definitions.* Terms used in this subpart have the following meanings:

(1) *Broadband connection.* A wired line, wireless channel, or satellite service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction.

(2) *Facilities-based provider.* An entity is a *facilities-based provider* of a service if it supplies such service using facilities that satisfy any of the following criteria:

(i) Physical facilities that the entity owns and that terminate at the end-user premises;

(ii) Facilities that the entity has obtained the right to use from other entities, such as dark fiber or satellite transponder capacity as part of its own network, or has obtained;

(iii) Unbundled network element (UNE) loops, special access lines, or other leased facilities that the entity uses to complete terminations to the end-user premises;

(iv) Wireless spectrum for which the entity holds a license or that the entity manages or has obtained the right to use via a spectrum leasing arrangement or comparable arrangement pursuant to subpart X of this Part (§§ 1.9001–1.9080); or

(v) Unlicensed spectrum.

(3) *End user.* A residential, business, institutional, or government entity that subscribes to a service, uses that service for its own purposes, and does not resell that service to other entities.

(4) *Local telephone service.* Telephone exchange or exchange access service (as defined in 47 U.S.C. 153(20 and (54)) provided by a common carrier or its affiliate (as defined in 47 U.S.C. 153(2)).

(5) *Mobile telephony service.* Mobile telephony (as defined in § 20.15 of this chapter) provided to end users by a commercial mobile radio service (CMRS) provider.

(6) *Broadband internet access service.* Has the meaning given the term in § 8.1(b) of this chapter.

(7) *Broadband map.* The map created by the Commission under 47 U.S.C. 642(c)(1)(A).

(8) *Cell edge probability.* The likelihood that the minimum threshold download and upload speeds with respect to broadband internet access service will be met or exceeded at a distance from a base station that is intended to indicate the ultimate edge of the coverage area of a cell.

(9) *Cell loading.* The percentage of the available air interface resources of a base station that are used by consumers with respect to broadband internet access service.

(10) *Clutter.* A natural or man-made surface feature that affects the propagation of a signal from a base station.

(11) *Fabric.* The Broadband Serviceable Location Fabric established under 47 U.S.C. 642(b)(1)(B).

(12) *FCC Form 477.* Form 477 of the Commission relating to local telephone competition and broadband reporting.

(13) *Indian Tribe.* Has the meaning given the term ''Indian tribe'' in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(14) *Mobility Fund Phase II.* The second phase of the proceeding to provide universal service support from the Mobility Fund (WC Docket No. 10–90; WT Docket No. 10–208).

(15) *Propagation model.* A mathematical formulation for the characterization of radio wave propagation as a function of frequency, distance, and other conditions.

(16) *Provider.* A facilities-based provider of fixed or mobile broadband internet access service.

(17) *Quality of service.* With respect to broadband internet access service, the download and upload speeds, and latency if applicable, with respect to that service, as determined by, and to the extent otherwise collected by, the Commission.

(18) *Shapefile.* A digital storage format containing geospatial or location-based data and attribute information regarding the availability of broadband internet access service and that can be viewed, edited, and mapped in geographic information system software.

(19) *Standard broadband installation.* The initiation by a provider of fixed

broadband internet access service in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider, and includes the initiation of fixed broadband internet access service through routine installation that can be completed not later than 10 business days after the date on which the service request is submitted.

(20) *H3 standardized geospatial indexing system.* A system developed by Uber Technologies, Inc., that overlays the Earth with hexagonal cells of different sizes at various resolutions. The smallest hexagonal cells are at resolution 15, in which the average hexagonal cell has an area of approximately 0.9 square meters, and the largest are at resolution 0, in which the average hexagonal cell has an area of approximately 4.25 million square kilometers. Hexagonal cells across different resolutions are referred to as a ''hex-n'' cell, where n is the resolution (*e.g.*, ''hex-15'' for the smallest size hexagonal cell). The H3 standardized geospatial indexing system employs a nested cell structure wherein a lower resolution hexagonal cell (the ''parent'') contains approximately seven hexagonal cells at the next highest resolution (its ''children''). That is, a hex-1 cell is the ''parent'' of seven hex-2 cells, each hex-2 cell is the parent of seven hex-3 cells, and so on.

(b) The following entities shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477:

(1) Facilities-based providers of broadband service;

(2) Providers of local telephone service;

(3) Facilities-based providers of mobile telephony service; and

(4) Providers of Interconnected Voice over internet Protocol (VoIP) service (as defined in §9.3 of this chapter) to end users.

(c) Respondents identified in paragraph (b) of this section shall include in each report a certification signed by an appropriate official of the respondent (as specified in the instructions to FCC Form 477) and shall report the title of their certifying official.

(d) Disclosure of data contained in FCC Form 477 will be addressed as follows:

(1) Emergency operations contact information contained in FCC Form 477 is information that should not be routinely available for public inspection pursuant to section 0.457 of this chapter, in addition to other information that should not be routinely available for public inspection pursuant to §0.457.

(2)(i) Respondents may request that provider-specific subscription information in FCC Form 477 filings be treated as confidential and be withheld from public inspection by so indicating on Form 477 at the time that they submit such data.

(ii) The Commission will release the following information in FCC Form 477 filings to the public, and respondents may not request confidential treatment of such information:

(A) Provider-specific mobile deployment data;

(B) Data regarding minimum advertised or expected speed for mobile broadband services; and

(C) Location information that is necessary to permit accurate broadband mapping, including crowdsourcing or challenge processes.

(3) Respondents seeking confidential treatment of any other data contained in FCC Form 477 must submit a request that the data be treated as confidential with the submission of their Form 477 filing, along with their reasons for withholding the information from the public, pursuant to §0.459 of this chapter.

(4) The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chiefs of the International Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, or Office of Economics and Analytics may release provider-specific information to:

(i) A state commission, provided that the state commission has protections in place that would preclude disclosure of any confidential information,

(ii) ''Eligible entities,'' as those entities are defined in the Broadband Data Improvement Act, in an aggregated format and pursuant to confidentiality

conditions prescribed by the Commission, and

(iii) Others, to the extent that access to such data can be accomplished in a manner that addresses concerns about the competitive sensitivity of the data and precludes public disclosure of any confidential information.

(e) Respondents identified in paragraph (b) of this section shall file a revised version of FCC Form 477 if and when they discover a significant error in their filed FCC Form 477. For counts, a difference amounting to 5 percent of the filed number is considered significant. For percentages, a difference of 5 percentage points is considered significant.

(f) Failure to file the FCC Form 477 in accordance with the Commission's rules and the instructions to the Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.

[65 FR 19684, Apr. 12, 2000; 65 FR 24654, Apr. 27, 2000, as amended at 67 FR 13224, Mar. 21, 2002; 69 FR 77938, Dec. 29, 2004; 69 FR 72027, Dec. 10, 2004; 73 FR 37881, July 2, 2008; 78 FR 45470, July 29, 2013; 78 FR 49148, Aug. 13, 2013; 84 FR 43723, Aug. 22, 2019; 85 FR 838, Jan. 8, 2020; 85 FR 50907, Aug. 18, 2020; 86 FR 18159, Apr. 7, 2021; 87 FR 21509, Apr. 11, 2022]

§ 1.7002 Frequency of reports.

Entities subject to the provisions of § 1.7001 shall file reports semi-annually. Reports shall be filed each year on or before March 1st (reporting data required on FCC Form 477 as of December 31 of the prior year) and September 1st (reporting data required on FCC Form 477 as of June 30 of the current year). Entities becoming subject to the provisions of § 1.7001 for the first time within a calendar year shall file data for the reporting period in which they become eligible and semi-annually thereafter.

[78 FR 49148, Aug. 13, 2013]

§ 1.7003 Authority to update FCC Form 477.

The International Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, and Office of Economics and Analytics may update the specific content of data to be submitted on FCC Form 477 as necessary to reflect changes over time in transmission technologies, spectrum usage, Geographical Information Systems (GIS) and other data storage and processing functionalities, and other related matters; and may implement any technical improvements or other clarifications to the filing mechanism and forms.

[84 FR 43724, Aug. 22, 2019]

§ 1.7004 Scope, content, and frequency of Digital Opportunity Data Collection filings.

(a) All providers shall make biannual filings with the Commission in the Digital Opportunity Data Collection portal in accordance with this subpart.

(b) Digital Opportunity Data Collection filings shall be made each year on or before March 1 (reporting data as of December 31 of the prior year) and September 1 (reporting data as of June 30 of the current year). Providers becoming subject to the provisions of this section for the first time shall file data initially for the reporting period in which they become eligible.

(c) Providers shall include in their filings data relating to the availability and quality of service of their broadband internet access service in accordance with this subpart.

(1) Each provider of terrestrial fixed or satellite broadband internet access service shall submit polygon shapefiles or a list of addresses or locations, and each provider of fixed wireless broadband internet access service shall submit propagation maps and model details that reflect the speeds and latency of its service or a list of addresses or locations, that document the areas where the provider has actually built out its broadband network infrastructure, such that the provider is able to provide service, and where the provider is capable of performing a standard broadband installation. Each provider's submission shall include the details of how it generated its polygon shapefiles, propagation maps and model details, or list of addresses or locations. In addition, fixed broadband internet service providers shall indicate, for each polygon shapefile or location they submit in the Digital Opportunity Data Collection, whether the reported service is available to residential customers and/or business customers.

(i) Each provider of fixed broadband internet access service shall report the maximum advertised download and upload speeds associated with its broadband internet access service available in an area. However, for service offered at speeds below 25 Mbps downstream/3 Mbps upstream, providers shall report the maximum advertised download and upload speeds associated with the service using two speed tiers: One for speeds greater than 200 kbps in at least one direction and less than 10 Mbps downstream/1 Mbps upstream, and another for speeds greater than or equal to 10 Mbps downstream/1 Mbps upstream and less than 25 Mbps downstream/3 Mbps upstream.

(ii) Each provider of fixed broadband internet access service shall indicate in its Digital Opportunity Data Collection filing whether the network round-trip latency associated with each maximum speed combination reported in a particular geographic area is less than or equal to 100 milliseconds (ms), based on the 95th percentile of measurements.

(iii) Terrestrial fixed providers using certain wireline technologies may not report coverage that exceeds a defined maximum distance from an aggregation point, including the drop distance, or that exceeds 500 feet from a deployed line or distribution network infrastructure to the parcel boundary of a served location.

(A) Terrestrial fixed providers using Digital Subscriber Line technology shall not report coverage that exceeds 6,600 route feet from the digital subscriber line access multiplexer to the customer premises for speeds offered at or above 25 Mbps downstream, 3 Mbps upstream. Providers that offer Digital Subscriber Line service in areas at speeds less than 25 Mbps downstream, 3 Mbps upstream shall not be subject to a maximum buffer requirement for such areas.

(B) Terrestrial fixed providers using Fiber to the Premises technology shall not report coverage that exceeds 196,000 route feet from the optical line termination point to the optical network termination point.

(C) Terrestrial fixed providers using Hybrid Fiber Coaxial Cable technology shall not report coverage that exceeds 12,000 route feet from the aggregation point to the customer premises.

(D) Locations can be reported as served beyond the maximum distances to the extent that:

(*1*) A provider has a current subscriber at a location beyond the bounds of the applicable maximum distance;

(*2*) A provider previously had a broadband subscriber, using the same technology, at a location beyond the bounds of the maximum distance;

(*3*) A provider is receiving or has received universal service support to provide broadband service in a particular geographic area—or has other Federal, state, or local obligations to make service available in the area—and the provider has begun to make service available in that area; or

(*4*) A provider receives a waiver to report coverage beyond the maximum distances.

(iv) Fixed wireless service providers that submit coverage maps shall submit propagation maps and propagation model details based on the following parameters:

(A) A cell edge probability of not less than 75% of receiving the maximum advertised download and upload speeds;

(B) A cell loading factor of not less than 50%; and

(C) Receiver heights within a range of four to seven meters.

(2) Fixed wireless service providers that submit coverage maps shall provide the following information with their propagation maps and model details:

(i) The name of the radio network planning tool(s) used, along with information including:

(A) The version number of the planning tool;

(B) The name of the planning tool's developer;

(C) The granularity of the model (*e.g.*, 3-arc-second square points); and

(D) Affirmation that the coverage model has been validated and calibrated at least one time using on the ground testing and/or other real-world measurements completed by the provider or its vendor.

(ii) The following base station information:

(A) Frequency band(s) used to provide the service being mapped;

(B) Information about whether and how carrier aggregation is used;

(C) The radio technologies used on each frequency band (*e.g.*, 802.11ac-derived orthogonal frequency division multiplexing modulation (OFDM), proprietary OFDM, long-term evolution (LTE)); and

(D) The elevation above ground for each base station.

(E) The geographic coordinates.

(iii) The following terrain and clutter information:

(A) The name and vintage of the datasets used;

(B) The resolution of clutter data;

(C) A list of clutter categories used with a description of each; and

(D) The link budget and a description of the other parameters used in the propagation model, including predicted signal strength.

(iv) Information on the height and power values used for receivers/customer premises equipment (CPE) antennas in their modeling (height must be within a range of four to seven meters).

(3) Mobile providers must submit coverage maps based on the following specified parameters:

(i) For 3G services—a minimum expected user download speed of 200 kbps and user upload speed of 50 kbps at the cell edge; for 4G LTE services—a minimum expected user download speed of 5 Mbps and user upload speed of 1 Mbps at the cell edge; for 5G–NR services—a minimum expected user download speed of 7 Mbps and user upload speed of 1 Mbps, and a minimum expected user download speed of 35 Mbps and user upload speed of 3 Mbps at the cell edge.

(ii) For each of the mobile broadband technologies, 3G, 4G LTE, and 5G–NR, and for mobile voice services, the provider's coverage maps must reflect coverage areas where users should expect to receive the minimum required download and upload speeds with cell edge coverage probability of not less than 90% and a cell loading of not less than 50%.

(iii) For each of the mobile broadband technologies, 3G, 4G LTE, and 5G–NR, and for mobile voice services, the provider's coverage maps must account for terrain and clutter and use terrain and clutter data with a resolution of 100 meters or better. Each coverage map must have a resolution of 100 meters or better.

(iv) For each of the mobile broadband technologies, 3G, 4G LTE, and 5G–NR, and for mobile voice services, the provider's coverage maps must be submitted in vector format.

(v) For each 4G LTE or 5G–NR propagation map that a provider submits, the provider also must submit a second set of maps showing Reference Signal Received Power (RSRP) signal levels in dBm, as would be measured at the industry standard of 1.5 meters above ground level (AGL), from each active cell site. A second set of maps showing Received Signal Strength Indicator (RSSI) signal levels for each 3G propagation map a provider submits is only required in areas where 3G is the only technology the provider offers. The RSSI and RSRP values should be provided in 10 dB increments or finer beginning with a maximum value of −50 dBm and continuing to −120 dBm.

(4) Mobile providers must disclose the following information regarding their radio network planning tools:

(i) The name of the planning tool;

(ii) The version number used to produce the map;

(iii) The name of the developer of the planning tool;

(iv) Affirmation that the coverage model has been validated and calibrated at least one time using drive test and/or other real-world measurements completed by the provider or its vendors, to include a brief summary of the process and date of calibration; and

(v) The propagation model or models used. If multiple models are used, the provider should include a brief description of the circumstances under which each model is deployed (*e.g.*, model X is used in urban areas, while model Y is used in rural areas) and include any sites where conditions deviate; and

(vi) The granularity of the models used (*e.g.*, 3-arc-second square points, bin sizes, and other parameters).

(5) Propagation maps submitted by providers must depict outdoor coverage, to include both on-street or pedestrian stationary usage, and in-vehicle mobile usage.

(6) Mobile providers must disclose all applicable link-budgets used to design their networks and provide service at the defined speeds, and all parameters and parameter values included in those link budgets, including the following information:

(i) A description of how the provider developed the link budget(s) and the rationale for using specific values in the link budget(s); and

(ii) The name of the creator, developer or supplier, as well as the vintage of the terrain and clutter datasets used, the specific resolution of the data, and a list of clutter categories used, a description of each clutter category, and a description of the propagation loss due to clutter for each.

(7) For each of the categories of data providers must disclose to the Commission, providers must submit reasonable parameter values and propagation models consistent with how they model their services when designing their networks. In no case may any provider omit link budget parameters or otherwise fail to account for constraints on their coverage projections.

(d) Providers shall include in each Digital Opportunity Data Collection filing a certification signed by a corporate officer of the provider that the officer has examined the information contained in the submission and that, to the best of the officer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct. All providers also shall submit a certification of the accuracy of its submissions by a qualified engineer. The engineering certification shall state that the certified professional engineer or corporate engineering officer is employed by the provider and has direct knowledge of, or responsibility for, the generation of the provider's Digital Opportunity Data Collection filing. If a corporate officer is also an engineer and has the requisite knowledge required under the Broadband DATA Act, a provider may submit a single certification that fulfills both requirements. The certified professional engineer or corporate engineering officer shall certify that he or she has examined the information contained in the submission and that, to the best of the engineer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct, and in accordance with the service provider's ordinary course of network design and engineering.

[85 FR 50907, Aug. 18, 2020, as amended at 86 FR 18159, Apr. 7, 2021]

§ 1.7005 Disclosure of data in the Fabric and Digital Opportunity Data Collection filings.

(a) The Commission shall protect the security, privacy, and confidentiality of non-public or competitively sensitive information submitted by entities or individuals, including information contained in the Fabric, the dataset supporting the Fabric, and availability data submitted pursuant to § 1.7004, by:

(1) Withholding from public inspection all data required to be kept confidential pursuant to § 0.457 of this chapter and all personally identifiable information submitted in connection with the information contained in the Fabric, the dataset supporting the Fabric, and availability data submitted pursuant to § 1.7004; and

(2) Subject to contractual or license restrictions, making public all other information received about the status of broadband internet access service availability at specific locations, including geographic coordinates and street addresses, whether a provider has reported availability at a location, and whether an entity or individual has disputed a report of broadband internet access service availability at such location.

(b) Providers may request that provider-specific subscription information in Digital Opportunity Data Act filings be treated as confidential and be withheld from public inspection by so indicating on the filing at the time that they submit such data.

(c) Providers seeking confidential treatment of any other data contained in their Digital Opportunity Data Collection filings must submit a request that the data be treated as confidential with the submission of their filing, along with their reasons for withholding the information from the public, pursuant to § 0.459 of this chapter.

(d) The Commission shall make all decisions regarding non-disclosure of provider-specific information.

(e) The Commission shall release the following information in Digital Opportunity Data Collection filings to the public, and providers may not request confidential treatment of such information:

(1) Provider-specific mobile deployment data;

(2) Data regarding minimum advertised or expected speed for mobile broadband internet access services; and

(3) Location information that is necessary to permit accurate broadband mapping, including as part of the crowdsourcing or challenge processes.

[85 FR 50907, Aug. 18, 2020]

§ 1.7006 Data verification.

(a) *Audits.* The Commission shall conduct regular audits of the information submitted by providers in their Digital Opportunity Data Collection filings. The audits:

(1) May be random, as determined by the Commission; or

(2) Can be required in cases where there may be patterns of filing incorrect information, as determined by the Commission.

(b) *Crowdsourcing process.* Entities or individuals may submit in the Commission's online portal specific information regarding the deployment and availability of broadband internet access service so that it may be used to verify and supplement information submitted by providers for potential inclusion in the coverage maps.

(1) Crowdsourced data filers shall provide:

(i) Contact information of the filer (*e.g.*, name, address, phone number, and email);

(ii) The location that is the subject of the filing, including the street address and/or coordinates (latitude and longitude) of the location;

(iii) The name of the provider;

(iv) Any relevant details disputing the deployment and availability of broadband internet access service at the location; and

(v) A certification that to the best of the filer's actual knowledge, information, and belief, all statements in the filing are true and correct.

(2) On-the-ground crowdsourced data must include the metrics and meet the testing parameters described in paragraphs (c)(1)(i) and (ii) of this section, except that the data may include any combination of download speed and upload speed rather than both.

(3) The online portal shall notify a provider of a crowdsourced data filing against it, but a provider is not required to respond to a crowdsourced data filing.

(4) If, as a result of crowdsourced data and/or other available data, the Commission determines that a provider's coverage information is likely not accurate, then the provider shall be subject to a verification inquiry consistent with the mobile verification process described in paragraph (c) of this section.

(5) All information submitted as part of the crowdsourcing process shall be made public via the Commission's website, with the exception of personally identifiable information and any data required to be confidential under § 0.457 of this chapter.

(c) *Mobile service verification process for mobile providers.* Mobile service providers must submit either infrastructure information or on-the-ground test data in response to a request by Commission staff as part of its inquiry to independently verify the accuracy of the mobile provider's coverage propagation models and maps. In addition to submitting either on-the-ground data or infrastructure data, a provider may also submit data collected from transmitter monitoring software. The Office of Economics and Analytics and the Wireless Telecommunications Bureau may require the submission of additional data when necessary to complete a verification inquiry. A provider must submit its data, in the case of both infrastructure information and on-the-ground data, within 60 days of receiving a Commission staff request. Regarding on-the-ground data, a provider must submit evidence of network performance based on a sample of on-the-ground tests that is statistically appropriate for the area tested. A provider must verify coverage of a sampled area using the H3 geospatial indexing system at resolution 8. The on-the-ground tests will be evaluated to confirm,

using a one-sided 95% statistical confidence interval, that the cell coverage is 90% or higher. In submitting data in response to a verification request, a provider must record at least two tests within each of the randomly selected hexagons where the time of the tests are at least four hours apart, irrespective of date, unless, for any sampled hexagon, the provider has and submits alongside its speed tests actual cell loading data for the cell(s) covering the hexagon sufficient to establish that median loading, measured in 15-minute intervals, did not exceed the modeled loading factor for the one-week period prior to the verification inquiry, in which case the provider is required to submit only a single test for the sampled hexagon. We will treat any tests within the sampled accessible point-hex that are outside the coverage area as valid in the case where tests were not recorded within the coverage area. If the required sampled point-hex continue to have missing tests, we will also consider tests that fall slightly outside the required point-hex but within the typical Global Positioning System (GPS) average user range error as valid when no tests are recorded within the point-hex. If the sampled point-hex still has missing tests, we would set those missing required speed tests as negative tests when performing the final adjudication. For in-vehicle mobile tests, providers must conduct tests with the antenna located inside the vehicle.

(1) When a mobile service provider chooses to demonstrate mobile broadband coverage availability by submitting on-the-ground data, the mobile service provider must provide valid on-the-ground tests within a Commission-identified statistically valid and unbiased sample of its network.

(i) On-the-ground test data must meet the following testing parameters:

(A) A minimum test length of 5 seconds and a maximum test length of 30 seconds. These test length parameters apply individually to download speed, upload speed, and round-trip latency measurements, and do not include ramp up time. The minimum test duration requirement will be relaxed once a download or upload test measurement has transferred at least 1,000 megabytes of data;

(B) Reporting test measurement results that have been averaged over the duration of the test (*i.e.*, total bits received divided by total test time); and

(C) Conducted outdoors between the hours of 6:00 a.m. and 10:00 p.m. local time; and

(ii) On-the-ground test data must include the following metrics for each test:

(A) Testing app name and version;

(B) Timestamp and duration of each test metric;

(C) Geographic coordinates (*i.e.*, latitude/longitude) measured at the start and end of each test metric measured with typical GPS Standard Positioning Service accuracy or better, along with location accuracy;

(D) Consumer-grade device type(s), brand/model, and operating system used for the test;

(E) Name and identity of the service provider being tested;

(F) Location of test server (*e.g.*, hostname or IP address);

(G) Signal strength, signal quality, unique identifier, and radiofrequency metrics of each serving cell, where available;

(H) Download speed;

(I) Upload speed;

(J) Round-trip latency;

(K) Whether the test was taken in an in-vehicle mobile or outdoor, pedestrian stationary environment;

(L) For an in-vehicle test, the speed the vehicle was traveling when the test was taken, where available;

(M) An indication of whether the test failed to establish a connection with a mobile network at the time and place it was initiated;

(N) The network technology (*e.g.*, 4G LTE (Long Term Evolution), 5G–NR (New Radio)) and spectrum bands used for the test; and

(O) All other metrics required per the most recent specification for mobile test data adopted by Office of Economics and Analytics and the Wireless Telecommunications Bureau in accordance with 5 U.S.C. 553.

(2) When a mobile service provider chooses to demonstrate mobile broadband coverage availability by submitting infrastructure data, the

mobile service provider must submit such data for all cell sites and antennas that serve or interfere with the targeted area.

(i) Infrastructure data must include the following information for each cell site that the provider uses to provide service for the area subject to the verification inquiry:

(A) The latitude and longitude of the cell site measured with typical GPS Standard Positioning Service accuracy or better;

(B) The cell and site ID number for each cell site;

(C) The ground elevation above mean sea level (AMSL) of the site (in meters);

(D) Frequency band(s) used to provide service for each site being mapped including channel bandwidth (in megahertz);

(E) Radio technologies used on each band for each site;

(F) Capacity (megabits per second (Mbps)) and type of backhaul used at each cell site;

(G) Number of sectors at each cell site;

(H) Effective Isotropic Radiated Power (EIRP, in decibel-milliwatts (dBm)) of the sector at the time the mobile provider creates its map of the coverage data;

(I) Geographic coordinates of each transmitter site measured with typical GPS Standard Positioning Service accuracy or better;

(J) Per site classification (*e.g.*, urban, suburban, or rural);

(K) Elevation above ground level for each base station antenna and other transmit antenna specifications (*i.e.*, the make and model, beamwidth (in degrees), radiation pattern, and orientation (azimuth and any electrical and/or mechanical down-tilt in degrees) at each cell site);

(L) Operate transmit power of the radio equipment at each cell site;

(M) Throughput and associated required signal strength and signal-to-noise ratio;

(N) Cell loading distribution;

(O) Areas enabled with carrier aggregation and a list of band combinations; and

(P) Any additional parameters and fields that are listed in the most-recent specifications for wireless infrastructure data released by the Office of Economics and Analytics and the Wireless Telecommunications Bureau in accordance with 5 U.S.C. 553.

(ii) [Reserved]

(d) *Fixed service challenge process.* State, local, and Tribal governmental entities, consumers, and other entities or individuals may submit data in an online portal to challenge the accuracy of the coverage maps at a particular location, any information submitted by a provider regarding the availability of broadband internet access service, or the Fabric.

(1) Challengers must provide in their submissions:

(i) Name and contact information (*e.g.*, address, phone number, email);

(ii) The street address or geographic coordinates (latitude/longitude) of the location(s) at which broadband internet access service coverage is being challenged;

(iii) Name of provider whose reported coverage information is being challenged;

(iv) Category of dispute, selected from pre-established options on the portal;

(v) For consumers challenging availability data or the coverage maps, evidence and details of a request for service (or attempted request for service), including the date, method, and content of the request and details of the response from the provider, or evidence showing no availability at the disputed location (*e.g.*, screen shot, emails);

(vi) For government or other entities, evidence and details about the dispute, including: (A) The challenger's methodology, (B) the basis for determinations underlying the challenge, and (C) communications with provider, if any, and outcome;

(vii) For challengers disputing locations in the Broadband Location Fabric, details and evidence about the disputed location;

(viii) For customer or potential customer availability or coverage map challengers, a representation that the challenger resides or does business at the location of the dispute or is authorized to request service there; and

(ix) A certification from an individual or an authorized officer or signatory of a challenger that the person examined the information contained in the challenge and that, to the best of the person's actual knowledge, information, and belief, all statements of fact contained in the challenge are true and correct.

(2) The online portal shall alert a provider if there has been a challenge with all required elements submitted against it.

(3) For availability and coverage map challenges, within 60 days of receiving an alert, a provider shall reply in the portal by:

(i) Accepting the allegation(s) raised by the challenger, in which case the provider shall submit a correction for the challenged location in the online portal within 30 days of its portal reply; or

(ii) Denying the allegation(s) raised by the challenger, in which the case the provider shall provide evidence, in the online portal and to the challenger, that the provider serves (or could and is willing to serve) the challenged location. If the provider denies the allegation(s) raised by the challenger, then the provider and the challenger shall have 60 days after the provider submits its reply to attempt to resolve the challenge.

(4) A provider's failure to respond to a challenge to its reported coverage data within the applicable timeframes shall result in a finding against the provider, resulting in mandatory corrections to the provider's Digital Opportunity Data Collection information to conform to the challenge. Providers shall submit any such corrections within 30 days of the missed reply deadline or the Commission will make the corrections on its own and incorporate such change into the coverage maps.

(5) Once a challenge containing all the required elements is submitted in the online portal, the location shall be identified on the coverage maps as ''in dispute/pending resolution.''

(6) If the parties are unable to reach consensus within 60 days after submission of the provider's reply in the portal, then the affected provider shall report the status of efforts to resolve the challenge in the online portal, after which the Commission, will review the evidence and make a determination, either:

(i) In favor of the challenger, in which case the provider shall update its Digital Opportunity Data Collection information within 30 days of the decision; or

(ii) In favor of the provider, in which case the location will no longer be subject to the ''in dispute/pending resolution'' designation on the coverage maps.

(7) In consumer challenges to availability and coverage map data, a consumer's challenge must make an initial showing, by a preponderance of the evidence, that a provider's data are inaccurate; a provider must then provide evidence showing, by a preponderance of the evidence, that its reported data are accurate.

(8) In challenges to availability and coverage data by governmental (State, local, Tribal), or other entities, the challenger must make a detailed, clear and methodologically sound showing, by clear and convincing evidence, that a provider's data are inaccurate.

(9) For challenges to the Fabric, after a challenge has been filed containing the required information in paragraph (d)(1) of this section, the provider will receive a notice of the challenge from the online portal and can respond to the challenge in the online portal, but is not required to do so, and the Commission shall seek to resolve such challenges within 60 days of receiving the challenge filing in the online portal.

(10) Government entities or other entities may file challenges at multiple locations in a single challenge, but each challenge must contain all of the requirements set forth in (d)(1) of this section.

(11) The Commission shall make public information about the location that is the subject of the challenge (including the street address and/or coordinates (latitude and longitude)), the name of the provider, and any relevant details concerning the basis for the challenge.

(e) *Mobile service challenge process for consumers.* Consumers may submit data to challenge the accuracy of mobile broadband coverage maps. Consumers

may challenge mobile coverage data based on lack of service or on poor service quality such as slow delivered user speed.

(1) Consumer challengers must provide in their submissions:

(i) Name, email address, and mobile phone number of the device on which the speed test was conducted;

(ii) Speed test data. Consumers must use a speed test app that has been designated by the Office of Engineering and Technology, in consultation with the Office of Economics and Analytics and the Wireless Telecommunications Bureau, for use in the challenge process. Consumer challenges must include on-the-ground test data that meets the requirements in paragraphs (c)(1)(i) and (ii) of this section, and must also report the timestamp that test measurement data were transmitted to the app developer's servers, as well as the source IP address and port of the device, as measured by the server;

(iii) A certification that the challenger is a subscriber or authorized user of the provider being challenged;

(iv) A certification that the speed test measurements were taken outdoors; and

(v) A certification that, to the best of the person's actual knowledge, information, and belief, the handset and the speed test application are in ordinary working order and all statements of fact contained in the submission are true and correct.

(2) Consumer speed tests will be used to create a cognizable challenge based on the following criteria:

(i) The smallest challengeable hexagonal cell is a hexagon at resolution 8 from the H3 standardized geospatial indexing system.

(ii) The download and upload components of a speed test will be evaluated separately.

(iii) A ''positive'' component is one that records speeds meeting or exceeding the minimum speeds that the mobile service provider reports as available where the test occurred (*e.g.*, a positive download component would show speeds of at least 5 Mbps for 4G LTE, and a positive upload component would show speeds of at least 1 Mbps for 4G LTE). A ''negative'' component is one that records speeds that fail to meet the minimum speeds that the mobile service provider reports as available where the test occurred.

(iv) A point-hex shall be defined as one of the seven hex-9s from the H3 standardized geospatial indexing system nested within a hex-8.

(v) A point-hex shall be defined as accessible where at least 50% of the area of the point-hex overlaps with the provider's reported coverage data and the point-hex overlaps with any primary, secondary, or local road in the U.S. Census Bureau's TIGER/Line Shapefiles.

(vi) A hex-8 from the H3 standardized geospatial indexing system shall be classified as challenged if the following three thresholds are met in the hex-8 for either the download or upload components.

(A) *Geographic threshold*. When there are at least four accessible point-hexes within the hex-8, each must contain two of the same test components (download or upload), one of which is a negative test. The threshold must be met for one component entirely, meaning that a challenge may contain either two upload components per point-hex, one of which is negative, or two download components per point-hex, one of which is negative. The minimum number of point-hexes in which tests must be recorded must be equal to the number of accessible point-hexes or four, whichever number is lower. If there are no accessible point-hexes within a hex-8, the geographic threshold shall not need to be met;

(B) *Temporal threshold*. A hex-8 cell must include a set of two negative test components of the same type with a time-of-day difference of at least four hours from another set of two negative test components of the same type, regardless of the date of the tests; and

(C) *Testing threshold*. At least five speed test components of the same type within a hex-8 cell are negative when a challenger has submitted 20 or fewer test components of that type.

(*1*) When challengers have submitted more than 20 test components of the same type, the following minimum percentage of the total number of test components of that type in the cell must be negative:

(*i*) When challengers have submitted 21–29 test components, at least 24% must be negative;

(*ii*) When challengers have submitted 30–45 test components, at least 22% must be negative;

(*iii*) When challengers have submitted 46–60 test components, at least 20% must be negative;

(*iv*) When challengers have submitted 61–70 test components, at least 18% must be negative;

(*v*) When challengers have submitted 71–99 test components, at least 17% must be negative; and

(*vi*) When challengers have submitted 100 or more test components, at least 16% must be negative.

(*2*) In a hex-8 with four or more accessible point-hexes, if the number of test components of the same type in one point-hex represent more than 50% of the total test components of that type in the hex-8 but still satisfies the geographic threshold, the components in that point-hex will count only towards 50% of the threshold. In a hex-8 where there are only three accessible point-hexes, if the number of test components of the same type in one point-hex represent more than 75% of the total test components of that type in the hex-8 but still satisfies the geographic threshold, the components in that point-hex will count only towards 75% of the threshold.

(*3*) Once the percentage of negative components of the same type recorded meets the minimum negative percentage required (or for a sample of fewer than 21 components, once there are at least five negative component submitted), no additional tests are required so long as both the geographic and temporal thresholds for a hex-8 have been met.

(vii) A larger, ''parent'' hexagon (at resolutions 7 or 6) shall be considered challenged if at least four of the child hexagons within such a ''parent'' hexagon are considered challenged.

(viii) Mobile service providers shall be notified of all cognizable challenges to their mobile broadband coverage maps at the end of each month. Challengers shall be notified when a mobile provider responds to the challenge. Mobile service providers and challengers both shall be notified monthly of the status of challenged areas and parties will be able to see a map of the challenged area and a notification about whether or not a challenge has been successfully rebutted, whether a challenge was successful, and if a challenged area was restored based on insufficient evidence to sustain a challenge.

(3) For areas with a cognizable challenge, providers either must submit a rebuttal to the challenge within a 60-day period of being notified of the challenge or concede and have the challenged area identified on the mobile coverage map as an area that lacks sufficient service.

(4) To dispute a challenge, a mobile service provider must submit on-the-ground test data that meets the requirements in paragraphs (c)(1)(i) and (ii) of this section, (for in-vehicle mobile tests, providers must conduct tests with the antenna located inside the vehicle), or infrastructure data that meets the requirements in paragraph (c)(2)(i) of this section to verify its coverage map(s) in the challenged area. To the extent that a mobile service provider believes it would be helpful to the Commission in resolving a challenge, it may choose to submit other data in addition to the data initially required, including but not limited to either infrastructure or on-the-ground testing (to the extent such data are not the primary option chosen by the provider) or other types of data such as data collected from network transmitter monitoring systems or software, or spectrum band-specific coverage maps. Such other data must be submitted at the same time as the primary on-the-ground testing or infrastructure rebuttal data submitted by the provider. If needed to ensure an adequate review, the Office of Economics and Analytics may also require that the provider submit other data in addition to the data initially submitted, including but not limited to either infrastructure or on-the-ground testing data (to the extent not the option initially chosen by the provider) or data collected from network transmitter monitoring systems or software (to the extent available in the provider's network). If a mobile

provider is not able to demonstrate sufficient coverage in a challenged hexagon, the mobile provider must revise its coverage maps to reflect the lack of coverage in such areas.

(i) A ''positive'' component is one that records speeds meeting or exceeding the minimum speeds that the mobile service provider reports as available where the test occurred (*e.g.*, a positive download component would show speeds of at least 5 Mbps for 4G LTE, and a positive upload component would show speeds of at least 1 Mbps for 4G LTE). A ''negative'' component is one that records speeds that fail to meet the minimum speeds that the mobile service provider reports as available where the test occurred.

(ii) A point-hex shall be defined as one of the seven nested hexagons at resolution 9 from the H3 standardized geospatial indexing system of a resolution 8 hexagon.

(iii) A point-hex shall be defined as accessible where at least 50% of the area of the point-hex overlaps with the provider's reported coverage data and the point-hex overlaps with any primary, secondary, or local road in the U.S. Census Bureau's TIGER/Line Shapefiles.

(iv) A mobile service provider that chooses to rebut a challenge to their mobile broadband coverage maps with on-the-ground speed test data must confirm that a challenged area has sufficient coverage using speed tests that were conducted during the 12 months prior to submitting a rebuttal. A provider may confirm coverage in any hex-8 cell within the challenged area. This includes any hex-8 cell that is challenged, and also any non-challenged hex-8 cell that is a child of a challenged hex-7 or hex-6 cell. Confirming non-challenged hex-8 cells can be used to confirm the challenged hex-7 or hex-6 cell. To confirm a hex-8 cell, a provider must submit on-the ground speed test data that meets the following criteria for both upload and download components:

(A) *Geographic threshold.* Two download components, at least one of which is a positive test, and two upload components, at least one of which is a positive test, are recorded within a minimum number of point-hexes within the challenged area, where the minimum number of point-hexes in which tests must be recorded must be equal to the number of accessible point-hexes or four, whichever number is lower. If there are no accessible point-hexes within a hex-8, the geographic threshold shall not need to be met.

(B) *Temporal threshold.* A hex-8 cell will need to include a set of five positive test components of the same type with a time-of-day difference of at least four hours from another set of five positive test components of the same type, regardless of the date of the test.

(C) *Testing threshold.* At least 17 positive test components of the same type within a hex-8 cell in the challenged area when the provider has submitted 20 or fewer test components of that type. When the provider has submitted more than 20 test components of the same type, a certain minimum percentage of the total number of test components of that type in the cell must be positive:

(*1*) When a provider has submitted 21–34 test components, at least 82% must be positive;

(*2*) When a provider has submitted 35–49 test components, at least 84% must be positive;

(*3*) When a provider has submitted 50–70 test components, at least 86% must be positive;

(*4*) When a provider has submitted 71–99 test components, at least 87% must be positive;

(*5*) When a provider has submitted 100 or more test components, at least 88% must be positive; and

(*6*) In a hex-8 with four or more accessible point-hexes, if the number of test components of the same type in one point-hex represent more than 50% of the total test components of that type in the hex-8 but still satisfies the geographic threshold, the components in that point-hex will count only toward 50% of the threshold. In a hex-8 where there are only three accessible point-hexes, if the number of test components of the same type in one point-hex represent more than 75% of the total test components of that type in the hex-8 but still satisfies the geographic threshold, the components in that

point-hex will count only toward 75% of the threshold.

(D) *Use of FCC Speed Test App or other software*. Using a mobile device running either a Commission-developed app (*e.g.*, the FCC Speed Test app), another speed test app approved by OET to submit challenges, or other software provided that the software adopts the test methodology and collects the metrics that approved apps must perform for consumer challenges and that government and third-party entity challenger speed test data must contain (for in-vehicle mobile tests, providers must conduct tests with the antenna located inside the vehicle):

(*1*) Providers must submit a complete description of the methodologies used to collect their data; and

(*2*) Providers must substantiate their data through the certification of a qualified engineer or official.

(E) *Use of an appropriate device*. Using a device that is able to interface with drive test software and/or runs on the Android operating system.

(v) A mobile service provider that chooses to rebut a challenge to their mobile broadband coverage maps with infrastructure data on their own may only do so in order to identify invalid, or non-representative, speed tests within the challenger speed test data. The mobile service provider must submit the same data as required when a mobile provider submits infrastructure information in response to a Commission verification request, including information on the cell sites and antennas used to provide service in the challenged area. A provider may submit only infrastructure data to rebut a challenge if:

(A) Extenuating circumstances at the time and location of a given test (*e.g.*, maintenance or temporary outage at the cell site) caused service to be abnormal. In such cases, a provider must submit coverage or footprint data for the site or sectors that were affected and information about the outage, such as bands affected, duration, and whether the outage was reported to the FCC's Network Outage Reporting System (NORS), along with a certification about the submission's accuracy;

(B) The mobile device(s) with which the challenger(s) conducted their speed tests are not capable of using or connecting to the radio technology or spectrum band(s) that the provider models for service in the challenged area. In such cases, a provider must submit band-specific coverage footprints and information about which specific device(s) lack the technology or band;

(C) The challenge speed tests were taken during an uncommon special event (*e.g.*, professional sporting event) that increased traffic on the network;

(D)(*1*) The challenge speed tests were taken during a period where cell loading was abnormally higher than the modeled cell loading factor. In such cases, providers must submit cell loading data that both:

(*i*) Establish that the cell loading for the primary cell(s) at the time of the test was abnormally higher than modeled; and

(*ii*) Include cell loading data for a one-week period before and/or after the provider was notified of the challenge showing as a baseline that the median loading for the primary cell(s) was not greater than the modeled value.

(*2*) If a high number of challenges show persistent over-loading, staff may initiate a verification inquiry to investigate whether mobile providers have submitted coverage maps based on an accurate assumption of cell loading in a particular area;

(E) The mobile device(s) with which the challenger(s) conducted their speed tests used a data plan that could result in slower service. In such cases, a provider must submit information about which specific device(s) used in the testing were using such a data plan and information showing that the provider's network did, in fact, slow the device at the time of the test; or

(F) The mobile device(s) with which the challenger(s) conducted their speed tests was either roaming or was used by the customer of a mobile virtual network operator. In such circumstances, providers must identify which specific device(s) used in the testing were either roaming at the time or used by the customer of a mobile virtual network operator based upon their records.

(vi) If the Commission determines, based on the infrastructure data submitted by providers, that challenge speed tests are invalid, such challenge speed tests shall be ruled void, and the Commission shall recalculate the challenged hexagons after removing any invalidated challenger speed tests and consider any challenged hexagons that no longer meet the challenge creation threshold to be restored to their status before the challenge was submitted.

(5) If a mobile service provider that has failed to rebut a challenge subsequently takes remedial action to improve coverage at the location of the challenge, the provider must notify the Commission of the actions it has taken to improve its coverage and provide either on-the-ground test data or infrastructure data to verify its improved coverage.

(6) After a challenged provider submits all responses and Commission staff determines the result of a challenge and any subsequent rebuttal has been determined:

(i) In such cases where a mobile service provider successfully rebuts a challenge, the area confirmed to have coverage shall be ineligible for challenge until the next biannual broadband availability data filing six months after the later of either the end of the 60-day response period or the resolution of the challenge.

(ii) A challenged area may be restored to an unchallenged state, if, as a result of data submitted by the provider, there is no longer sufficient evidence to sustain the challenge to that area, but the provider's data fall short of confirming the area. A restored hexagon would be subject to challenge at any time in the future as challengers submit new speed test data.

(iii) In cases where a mobile service provider concedes or loses a challenge, the provider must file, within 30 days, geospatial data depicting the challenged area that has been shown to lack sufficient service. Such data will constitute a correction layer to the provider's original propagation model-based coverage map, and Commission staff will use this layer to update the broadband coverage map. In addition, to the extent that a provider does not later improve coverage for the relevant technology in an area where it conceded or lost a challenge, it must include this correction layer in its subsequent filings to indicate the areas shown to lack service.

(7) Commission staff are permitted to consider other relevant data to support a mobile service provider's rebuttal of challenges, including on-the-ground data or infrastructure data (to the extent such data are not the primary rebuttal option submitted by the mobile service provider). The Office of Economics and Analytics will review such data when voluntarily submitted by providers in response to challenges, and if it concludes that any of the data sources are sufficiently reliable, it will specify appropriate standards and specifications for each type of data and will issue a public notice adding the data source to the alternatives available to providers to rebut a consumer challenge.

(f) *Mobile service challenge process for State, local, and Tribal governmental entities; and other entities or individuals.* State, local, and Tribal governmental entities and other entities or individuals may submit data to challenge accuracy of mobile broadband coverage maps. They may challenge mobile coverage data based on lack of service or poor service quality such as slow delivered user speed.

(1) State, local, and Tribal governmental entities and other entity or individual challengers must provide in their submissions:

(i) Government and other entity challengers may use their own software and hardware to collect data for the challenge process. When they submit their data the data must meet the requirements in paragraphs (c)(1)(i) and (ii) of this section, except that government and other entity challengers may submit the International Mobile Equipment Identity (IMEI) of the device used to conduct a speed test for use in the challenge process instead of the timestamp that test measurement data were transmitted to the app developer's servers, as well as the source IP address and port of the device, as measured by the server;

(ii) A complete description of the methodology(ies) used to collect their data;

(iii) Challengers must substantiate their data through the certification of a qualified engineer or official; and

(iv) If the test was taken in an in-vehicle mobile environment, whether the test was conducted with the antenna outside of the vehicle.

(2) Challengers must conduct speed tests using a device advertised by the challenged service provider as compatible with its network and must take all speed tests outdoors. Challengers must also use a device that is able to interface with drive test software and/or runs on the Android operating system.

(3) For a challenge to be considered a cognizable challenge, thus requiring a mobile service provider response, the challenge must meet the same thresholds specified in paragraph (e)(2) of this section.

(4) For areas with a cognizable challenge, providers either must submit a rebuttal to the challenge within a 60-day period of being notified of the challenge or concede and have the challenged area identified on the mobile coverage map as an area that lacks sufficient service.

(5) To dispute a challenge, a mobile service provider must submit on-the-ground test data or infrastructure data to verify its coverage map(s) in the challenged area based on the methodology set forth in paragraph (e)(4) of this section. To the extent that a service provider believes it would be helpful to the Commission in resolving a challenge, it may choose to submit other data in addition to the data initially required, including but not limited to either infrastructure or on-the-ground testing (to the extent such data are not the primary option chosen by the provider) or other types of data such as data collected from network transmitter monitoring systems or software or spectrum band-specific coverage maps. Such other data must be submitted at the same time as the primary on-the-ground testing or infrastructure rebuttal data submitted by the provider. If needed to ensure an adequate review, the Office of Economics and Analytics may also require that the provider submit other data in addition to the data initially submitted, including but not limited to either infrastructure or on-the-ground testing data (to the extent not the option initially chosen by the provider) or data collected from network transmitter monitoring systems or software (to the extent available in the provider's network).

(6) If a provider that has failed to rebut a challenge subsequently takes remedial action to improve coverage at the location of the challenge, the provider must notify the Commission of the actions it has taken to improve its coverage and provide either on-the-ground test data or infrastructure data to verify its improved coverage.

(7) In cases where a mobile service provider concedes or loses a challenge, the provider must file, within 30 days, geospatial data depicting the challenged area that has been shown to lack service. Such data will constitute a correction layer to the provider's original propagation model-based coverage map, and Commission staff will use this layer to update the broadband coverage map. In addition, to the extent that a provider does not later improve coverage for the relevant technology in an area where it conceded or lost a challenge, it must include this correction layer in its subsequent Digital Opportunity Data Collection filings to indicate the areas shown to lack service.

[85 FR 50907, Aug. 18, 2020, as amended at 86 FR 18160, Apr. 7, 2021; 87 FR 21509, Apr. 11, 2022]

§ 1.7007 Establishing the Fabric.

(a) The Commission shall create the Fabric, a common dataset of all locations in the United States where fixed broadband internet access service can be installed. The Fabric shall:

(1) Contain geocoded information for each location where fixed broadband internet access service can be installed;

(2) Serve as the foundation upon which all data relating to the availability of fixed broadband internet access service collected pursuant to the Digital Opportunity Data Collection shall be overlaid;

(3) Be compatible with commonly used Geographical Information Systems (GIS) software; and

(4) Be updated every 6 months by the Commission.

(b) The Commission shall prioritize implementing the Fabric for rural and insular areas of the United States.

[85 FR 50907, Aug. 18, 2020]

§ 1.7008 Creation of broadband internet access service coverage maps.

(a) After consultation with the Federal Geographic Data Committee, the Commission shall use the availability and quality of service data submitted by providers in the Digital Opportunity Data Collection to create:

(1) The Broadband Map, which shall depict areas of the country that remain unserved by providers and depict the extent of availability of broadband internet access service;

(2) A map that depicts the availability of fixed broadband internet access service; and

(3) A map that depicts the availability of mobile broadband internet access service.

(b) The Commission shall use the maps created in paragraph (a) of this section to determine areas where broadband internet access service is and is not available and when making any funding award for broadband internet access service deployment for residential and mobile customers.

(c) Based on the most recent Digital Opportunity Data Collection information collected from providers, the Commission shall update the maps created in paragraph (a) of this section at least biannually using the data collected from providers.

(d)(1) The Commission shall collect verified data for use in the coverage maps from:

(i) State, local, and Tribal entities primarily responsible for mapping or tracking broadband internet access service coverage in their areas;

(ii) Third parties, if the Commission determines it is in the public interest to use their data in the development of the coverage maps or the verification of data submitted by providers; and

(iii) Other Federal agencies.

(2) To the extent government entities or third parties choose to file verified data, they must follow the same filing process as providers submitting their broadband internet access service data in the data portal. Government entities and third parties that file on-the-ground test data must submit such data using the same metrics and testing parameters the Commission requires of mobile service providers when responding to a Commission request to verify mobile providers' broadband network coverage with on-the-ground data (*see* § 1.7006(c)(1)).

(3) Providers shall review the verified data submitted by governments and third parties in the online portal, work with the submitter to resolve any coverage discrepancies, make any corrections they deem necessary based on such review, and submit any updated data to the Commission within 60 days of the date that the provider is notified that the data has been submitted in the online portal by the government entity or third party.

[85 FR 50907, Aug. 18, 2020, as amended at 86 FR 18162, Apr. 7, 2021; 87 FR 21514, Apr. 11, 2022]

§ 1.7009 Enforcement.

(a) It shall be unlawful for an entity or individual to willfully and knowingly, or recklessly, submit information or data as part of the Digital Opportunity Data Collection that is materially inaccurate or incomplete with respect to the availability or the quality of broadband internet access service. Such action may lead to enforcement action and/or penalties as set forth in the Communications Act and other applicable laws.

(b) Failure to make the Digital Opportunity Data Collection filing in accordance with the Commission's rules and the instructions to the Digital Opportunity Data Collection may lead to enforcement action pursuant to the Communications Act of 1934, as amended, and any other applicable law.

(c) For purposes of this section, ''materially inaccurate or incomplete'' means a submission that contains omissions or incomplete or inaccurate information that the Commission finds has a substantial impact on its collection and use of the data collected in order to comply with the requirements of 47 U.S.C. 641–646.

(d) Providers must file corrected data when they discover inaccuracy, omission, or significant reporting error in the original data that they submitted, whether through self-discovery, the

crowdsource process, the challenge process, the Commission verification process, or otherwise.

(1) Providers must file corrections within 30 days of their discovery of incorrect or incomplete data; and

(2) The corrected filings must be accompanied by the same types of certifications that accompany the original filings.

[86 FR 18162, Apr. 7, 2021]

§ 1.7010 Authority to update the Digital Opportunity Data Collection.

The International Bureau, Wireless Telecommunications Bureau, Wireline Competition Bureau, and Office of Economics and Analytics may update the specific format of data to be submitted pursuant to the Digital Opportunity Data Collection to reflect changes over time in Geographical Information Systems (GIS) and other data storage and processing functionalities and may implement any technical improvements or other clarifications to the filing mechanism and forms.

[85 FR 50907, Aug. 18, 2020]

Subpart W—FCC Registration Number

SOURCE: 66 FR 47895, Sept. 14, 2001, unless otherwise noted.

§ 1.8001 FCC Registration Number (FRN).

(a) The FCC Registration Number (FRN) is a 10-digit unique identifying number that is assigned to entities doing business with the Commission.

(b) The FRN is obtained through the Commission Registration System (CORES) over the Internet at the CORES link at *www.fcc.gov* or by filing FCC Form 160.

§ 1.8002 Obtaining an FRN.

(a) The FRN must be obtained by anyone doing business with the Commission, see 31 U.S.C. 7701(c)(2), including but not limited to:

(1) Anyone required to pay statutory charges under subpart G of this part;

(2) Anyone applying for a license, including someone who is exempt from paying statutory charges under subpart G of this part, see §§ 1.1114 and 1.1162;

(3) Anyone participating in a spectrum auction;

(4) Anyone holding or obtaining a spectrum auction license or loan;

(5) Anyone paying statutory charges on behalf of another entity or person; and

(6) Any applicant or service provider participating in the Schools and Libraries Universal Service Support Program, part 54, subpart F, of this chapter.

(b)(1) When registering for an FRN through the CORES, an entity's name, entity type, contact name and title, address, valid email address, and taxpayer identifying number (TIN) must be provided. For individuals, the TIN is the social security number (SSN).

(2) Information listed in paragraph (b)(1) of this section must be kept current by registrants either by updating the information on-line at the CORES link at *www.fcc.gov* or by filing FCC Form 161 (CORES Update/Change Form).

(c) A business may obtain as many FRNs as it deems appropriate for its business operations. Each subsidiary with a different TIN must obtain a separate FRN. Multiple FRNs shall not be obtained to evade payment of fees or other regulatory responsibilities.

(d) An FRN may be assigned by the Commission, which will promptly notify the entity of the assigned FRN.

[66 FR 47895, Sept. 14, 2001, as amended at 67 FR 36818, May 28, 2002; 68 FR 66277, Nov. 25, 2003; 69 FR 55109, Sept. 13, 2004; 70 FR 21651, Apr. 27, 2005; 86 FR 59868, Oct. 29, 2021]

§ 1.8003 Providing the FRN in Commission filings.

The FRN must be provided with any filings requiring the payment of statutory charges under subpart G of this part, anyone applying for a license (whether or not a fee is required), including someone who is exempt from paying statutory charges under subpart G of this part, anyone participating in a spectrum auction, making up-front payments or deposits in a spectrum auction, anyone making a payment on an auction loan, anyone making a contribution to the Universal Service Fund, any applicant or service provider

participating in the Schools and Libraries Universal Service Support Program, and anyone paying a forfeiture or other payment. A list of applications and other instances where the FRN is required will be posted on our Internet site and linked to the CORES page.

[69 FR 55109, Sept. 13, 2004]

§ 1.8004 Penalty for Failure to Provide the FRN.

(a) Electronic filing systems for filings that require the FRN will not accept a filing without the appropriate FRN. If a party seeks to make an electronic filing and does not have an FRN, the system will direct the party to the CORES website to obtain an FRN.

(b) Except as provided in paragraph (d) of this section or in other Commission rules, filings subject to the FRN requirement and submitted without an FRN will be returned or dismissed.

(c) Where the Commission has not established a filing deadline for an application, a missing or invalid FRN on such an application may be corrected and the application resubmitted. Except as provided in paragraph (d) of this section or in other Commission rules, the date that the resubmitted application is received by the Commission with a valid FRN will be considered the official filing date.

(d) Except for the filing of tariff publications (*see* 47 CFR 61.1(b)) or as provided in other Commission rules, where the Commission has established a filing deadline for an application and that application may be filed on paper, a missing or invalid FRN on such an application may be corrected with ten (10) business days of notification to the filer by the Commission staff and, in the event of such timely correction, the original date of filing will be retained as the official filing date.

[66 FR 47895, Sept. 14, 2001, as amended at 67 FR 36818, May 28, 2002]

Subpart X—Spectrum Leasing

SOURCE: 68 FR 66277, Nov. 25, 2003, unless otherwise noted.

SCOPE AND AUTHORITY

§ 1.9001 Purpose and scope.

(a) The purpose of this subpart is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. This subpart also implements policies for private commons arrangements. The policies and rules in this subpart also implicate other Commission rule parts, including parts 1, 2, 20, 22, 24, 25, 27, 30, 80, 90, 95, and 101 of title 47, chapter I of the Code of Federal Regulations.

(b) Licensees holding exclusive use rights are permitted to engage in spectrum leasing whether their operations are characterized as commercial, common carrier, private, or non-common carrier.

[85 FR 76479, Nov. 30, 2020, as amended at 86 FR 59869, Oct. 29, 2021]

§ 1.9003 Definitions.

Contraband Interdiction System. Contraband Interdiction System is a system that transmits radio communication signals comprised of one or more stations used only in a correctional facility exclusively to prevent transmissions to or from contraband wireless devices within the boundaries of the facility and/or to obtain identifying information from such contraband wireless devices.

Contraband wireless device. A contraband wireless device is any wireless device, including the physical hardware or part of a device, such as a subscriber identification module (SIM), that is used within a correctional facility in violation of federal, state, or local law, or a correctional facility rule, regulation, or policy.

Correctional facility. A correctional facility is any facility operated or overseen by federal, state, or local authorities that houses or holds criminally charged or convicted inmates for any period of time, including privately owned and operated correctional facilities that operate through contracts with federal, state, or local jurisdictions.

De facto transfer leasing arrangement. A spectrum leasing arrangement in which a licensee retains *de jure* control

of its license while transferring *de facto* control of the leased spectrum to a spectrum lessee, pursuant to the spectrum leasing rules set forth in this subpart.

FCC Form 608. FCC Form 608 is the form to be used by licensees and spectrum lessees that enter into spectrum leasing arrangements pursuant to the rules set forth in this subpart. Parties are required to submit this form electronically when entering into spectrum leasing arrangements under this subpart, except that licensees falling within the provisions of §1.913(d), may file the form either electronically or manually.

Long-term de facto transfer leasing arrangement. A long-term *de facto* transfer leasing arrangement is a *de facto* transfer leasing arrangement that has an individual term, or series of combined terms, of more than one year.

Private commons. A ''private commons'' arrangement is an arrangement, distinct from a spectrum leasing arrangement but permitted in the same services for which spectrum leasing arrangements are allowed, in which a licensee or spectrum lessee makes certain spectrum usage rights under a particular license authorization available to a class of third-party users employing advanced communications technologies that involve peer-to-peer (device-to-device) communications and that do not involve use of the licensee's or spectrum lessee's end-to-end physical network infrastructure (e.g., base stations, mobile stations, or other related elements).

Short-term de facto transfer leasing arrangement. A short-term *de facto* transfer leasing arrangement is a *de facto* transfer leasing arrangement that has an individual or combined term of not longer than one year.

Spectrum leasing application. The application submitted to the Commission by a licensee and a spectrum lessee seeking approval of a *de facto* transfer leasing arrangement.

Spectrum leasing arrangement. An arrangement between a licensed entity and a third-party entity in which the licensee leases certain of its spectrum usage rights in the licensed spectrum to the third-party entity, the spectrum lessee, pursuant to the rules set forth in this subpart. The arrangement may involve the leasing of any amount of licensed spectrum, in any geographic area or site encompassed by the license, for any period of time during the term of the license authorization. Two different types of spectrum leasing arrangements, spectrum manager leasing arrangements and *de facto* transfer leasing arrangements, are permitted under this subpart.

Spectrum leasing notification. The required notification submitted by a licensee to the Commission regarding a spectrum manager leasing arrangement.

Spectrum lessee. Any third-party entity that leases, pursuant to the spectrum leasing rules set forth in this subpart, certain spectrum usage rights held by a licensee. This term includes reference to third-party entities that lease spectrum usage rights as spectrum sublessees under spectrum sub-leasing arrangements.

Spectrum manager leasing arrangement. A spectrum leasing arrangement in which a licensee retains both *de jure* control of its license and *de facto* control of the leased spectrum that it leases to a spectrum lessee, pursuant to the spectrum leasing rules set forth in this subpart.

[68 FR 66277, Nov. 25, 2003, as amended at 69 FR 77550, Dec. 27, 2004; 82 FR 22759, May 18, 2017]

EFFECTIVE DATE NOTE: At 69 FR 77550, Dec. 27, 2004, §1.9003 was amended by removing, adding, and revising certain definitions. The amendments contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1.9005 Included services.

The spectrum leasing policies and rules of this subpart apply to the following services, which include Wireless Radio Services in which commercial or private licensees hold exclusive use rights and the Ancillary Terrestrial Component (ATC) of a Mobile Satellite Service:

(a) The Paging and Radiotelephone Service (part 22 of this chapter);

(b) The Rural Radiotelephone Service (part 22 of this chapter);

(c) The Air-Ground Radiotelephone Service (part 22 of this chapter);

(d) The Cellular Radiotelephone Service (part 22 of this chapter);

(e) The Offshore Radiotelephone Service (part 22 of this chapter);

(f) The narrowband Personal Communications Service (part 24 of this chapter);

(g) The broadband Personal Communications Service (part 24 of this chapter);

(h) The Broadband Radio Service (part 27 of this chapter);

(i) The Educational Broadband Service (part 27 of this chapter);

(j) The Wireless Communications Service in the 698–746 MHz band (part 27 of this chapter);

(k) The Wireless Communications Service in the 746–758 MHz, 775–788 MHz, and 805–806 MHz bands (part 27 of this chapter);

(l) The Wireless Communications Service in the 1390–1392 MHz band (part 27 of this chapter);

(m) The Wireless Communications Service in the paired 1392–1395 MHz and 1432–1435 MHz bands (part 27 of this chapter);

(n) The Wireless Communications Service in the 1670–1675 MHz band (part 27 of this chapter);

(o) The Wireless Communications Service in the 2305–2320 and 2345–2360 MHz bands (part 27 of this chapter);

(p) The Citizens Broadband Radio Service in the 3550–3650 MHz band (part 96 of this chapter).

(q) The Advanced Wireless Services (part 27 of this chapter);

(r) The VHF Public Coast Station service (part 80 of this chapter);

(s) The Automated Maritime Telecommunications Systems service (part 80 of this chapter);

(t) The Public Safety Radio Services (part 90 of this chapter);

(u) The 220 MHz Service (excluding public safety licensees) (part 90 of this chapter);

(v) The Specialized Mobile Radio Service in the 800 MHz and 900 MHz bands (including exclusive use SMR licenses in the General Category channels) (part 90 of this chapter);

(w) The Location and Monitoring Service (LMS) with regard to licenses for multilateration LMS systems (part 90 of this chapter);

(x) Paging operations under part 90 of this chapter;

(y) The Business and Industrial/Land Transportation (B/ILT) channels (part 90 of this chapter) (including all B/ILT channels above 512 MHz and those in the 470–512 MHz band where a licensee has achieved exclusivity, but excluding B/ILT channels in the 470–512 MHz band where a licensee has not achieved exclusivity and those channels below 470 MHz, including those licensed pursuant to 47 CFR 90.187(b)(2)(v));

(z) The 218–219 MHz band (part 95 of this chapter);

(aa) The Local Multipoint Distribution Service (part 101 of this chapter);

(bb) The 24 GHz Band (part 101 of this chapter);

(cc) The 39 GHz Band (part 101 of this chapter);

(dd) The Multiple Address Systems band (part 101 of this chapter);

(ee) The Local Television Transmission Service (part 101 of this chapter);

(ff) The Private-Operational Fixed Point-to-Point Microwave Service (part 101 of this chapter);

(gg) The Common Carrier Fixed Point-to-Point Microwave Service (part 101 of this chapter);

(hh) The Multipoint Video Distribution and Data Service (part 101 of this chapter);

(ii) The 700 MHz Guard Bands Service (part 27 of this chapter);

(jj) The ATC of a Mobile Satellite Service (part 25 of this chapter);

(kk) The 600 MHz band (part 27 of this chapter);

(ll) The Upper Microwave Flexible Use Service (part 30 of this chapter);

(mm) The 3.7 GHz Service in the 3.7–3.98 GHz band;

(nn) The 900 MHz Broadband Service (part 27 of this chapter); and

(oo) [Reserved]

(pp) The 3.45 GHz Service in the 3.45–3.55 GHz band (part 27 of this chapter).

[69 FR 77551, Dec. 27, 2004, as amended at 71 FR 29815, May 24, 2006; 72 FR 27708, May 16, 2007; 72 FR 48843, Aug. 24, 2007; 76 FR 31259, May 31, 2011; 79 FR 596, Jan. 6, 2014; 79 FR 48533, Aug. 15, 2014; 81 FR 49065, July 26, 2016; 81 FR 79931, Nov. 14, 2016; 85 FR 22861, Apr. 23, 2020; 85 FR 43129, July 16, 2020; 85 FR 76479, Nov. 30, 2020; 86 FR 17942, Apr. 7, 2021; 86 FR 59869, Oct. 29, 2021]

GENERAL POLICIES AND PROCEDURES

§ 1.9010 *De facto* control standard for spectrum leasing arrangements.

(a) Under the rules established for spectrum leasing arrangements in this subpart, the following standard is applied for purposes of determining whether a licensee retains *de facto* control under section 310(d) of the Communications Act with regard to spectrum that it leases to a spectrum lessee.

(b) A licensee will be deemed to have retained *de facto* control of leased spectrum if it enters into a spectrum leasing arrangement and acts as a spectrum manager with regard to portions of the licensed spectrum that it leases to a spectrum lessee, provided the licensee satisfies the following two conditions:

(1) *Licensee responsibility for lessee compliance with Commission policies and rules.* The licensee must remain fully responsible for ensuring the spectrum lessee's compliance with the Communications Act and all applicable policies and rules directly related to the use of the leased spectrum.

(i) Through contractual provisions and actual oversight and enforcement of such provisions, the licensee must act in a manner sufficient to ensure that the spectrum lessee operates in conformance with applicable technical and use rules governing the license authorization.

(ii) The licensee must maintain a reasonable degree of actual working knowledge about the spectrum lessee's activities and facilities that affect its ongoing compliance with the Commission's policies and rules. These responsibilities include: Coordinating operations and modifications of the spectrum lessee's system to ensure compliance with Commission rules regarding non-interference with co-channel and adjacent channel licensees (and any authorized spectrum user); making all determinations as to whether an application is required for any individual spectrum lessee stations (e.g., those that require frequency coordination, submission of an Environmental Assessment under § 1.1307 of subpart I of this part, those that require international or Interdepartment Radio Advisory Committee (IRAC) coordination, those that affect radio frequency quiet zones described in § 1.924 of subpart F of this part, or those that require notification to the Federal Aviation Administration under part 17 of this chapter); and, ensuring that the spectrum lessee complies with the Commission's safety guidelines relating to human exposure to radiofrequency (RF) radiation (e.g., § 1.1307(b) and related rules of subpart I of this part). The licensee is responsible for resolving all interference-related matters, including conflicts between its spectrum lessee and any other spectrum lessee or licensee (or authorized spectrum user). The licensee may use agents (e.g., counsel, engineering consultants) when carrying out these responsibilities, so long as the licensee exercises effective control over its agents' actions.

(iii) The licensee must be able to inspect the spectrum lessee's operations and must retain the right to terminate the spectrum leasing arrangement in the event the spectrum lessee fails to comply with the terms of the arrangement and/or applicable Commission requirements. If the licensee or the Commission determines that there is any violation of the Commission's rules or that the spectrum lessee's system is causing harmful interference, the licensee must immediately take steps to remedy the violation, resolve the interference, suspend or terminate the operation of the system, or take other measures to prevent further harmful interference until the situation can be remedied. If the spectrum lessee refuses to resolve the interference, remedy the violation, or suspend or terminate operations, either at the direction of the licensee or by order of the Commission, the licensee must use all reasonable legal means necessary to enforce compliance.

(2) *Licensee responsibility for interactions with the Commission, including all filings, required under the license authorization and applicable service rules directly related to the leased spectrum.* The licensee remains responsible for the following interactions with the Commission:

(i) The licensee must file the necessary notification with the Commission, as required under § 1.9020(e).

(ii) The licensee is responsible for making all required filings (e.g., applications, notifications, correspondence) associated with the license authorization that are directly affected by the spectrum lessee's use of the licensed spectrum. The licensee may use agents (e.g., counsel, engineering consultants) to complete these filings, so long as the licensee exercises effective control over its agents' actions and complies with any signature requirements for such filings.

[68 FR 66277, Nov. 25, 2003, as amended at 69 FR 77551, Dec. 27, 2004]

§ 1.9020 Spectrum manager leasing arrangements.

(a) *Overview.* Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a spectrum manager leasing arrangement, without the need for prior Commission approval, provided that the licensee retains *de jure* control of the license and *de facto* control, as defined and explained in this subpart, of the leased spectrum. The licensee must notify the Commission of the spectrum leasing arrangement pursuant to the rules set forth in this section. The term of a spectrum manager leasing arrangement may be no longer than the term of the license authorization.

(b) *Rights and responsibilities of the licensee.* (1) The licensee is directly and primarily responsible for ensuring the spectrum lessee's compliance with the Communications Act and applicable Commission policies and rules.

(2) The licensee retains responsibility for maintaining its compliance with applicable eligibility and ownership requirements imposed on it pursuant to the license authorization.

(3) The licensee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(c) *Rights and responsibilities of the spectrum lessee.* (1) The spectrum lessee must comply with the Communications Act and with Commission requirements associated with the license.

(2) The spectrum lessee is responsible for establishing that it meets the eligibility and qualification requirements applicable to spectrum lessees under the rules set forth in this section.

(3) The spectrum lessee must comply with any obligations that apply directly to it as a result of its own status as a service provider (e.g., Title II obligations if the spectrum lessee acts as a telecommunications carrier or acts as a common carrier).

(4) In addition to the licensee being directly accountable to the Commission for ensuring the spectrum lessee's compliance with the Commission's operational rules and policies (as discussed in this subpart), the spectrum lessee is independently accountable to the Commission for complying with the Communications Act and Commission policies and rules, including those that apply directly to the spectrum lessee as a result of its own status as a service provider.

(5) In leasing spectrum from a licensee, the spectrum lessee must accept Commission oversight and enforcement consistent with the license authorization. The spectrum lessee must cooperate fully with any investigation or inquiry conducted by either the Commission or the licensee, allow the Commission or the licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the licensee and to the extent that such suspension would be consistent with the Commission's suspension policies.

(6) The spectrum lessee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(d) *Applicability of particular service rules and policies.* Under a spectrum manager leasing arrangement, the service rules and policies apply in the following manner to the licensee and spectrum lessee:

(1) *Interference-related rules.* The interference and radiofrequency (RF) safety rules applicable to use of the spectrum by the licensee as a condition of its license authorization also apply to the use of the spectrum leased by the spectrum lessee.

(2) *General eligibility rules.* (i) The spectrum lessee must meet the same eligibility and qualification requirements that are applicable to the licensee under its license authorization, with the following exceptions. A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Public Safety Radio Services (see part 90, subpart B and § 90.311(a)(1)(i) of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee is an entity providing communications in support of public safety operations (see § 90.523(b) of this chapter). A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Mobile Satellite Service with ATC authority (see part 25 of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee meets the other eligibility and qualification requirements of paragraphs (d)(2)(ii) and (iv) of this section.

(ii) The spectrum lessee must meet applicable foreign ownership eligibility requirements (*see* sections 310(a), 310(b) of the Communications Act).

(iii) The spectrum lessee must satisfy any qualification requirements, including character qualifications, applicable to the licensee under its license authorization.

(iv) The spectrum lessee must not be a person subject to the denial of Federal benefits under the Anti-Drug Abuse Act of 1988 (*see* § 1.2001 *et seq.* of subpart P of this part).

(v) The licensee may reasonably rely on the spectrum lessee's certifications that it meets the requisite eligibility and qualification requirements contained in the notification required by this section.

(3) *Use restrictions.* To the extent that the licensee is restricted from using the licensed spectrum to offer particular services under its license authorization, the use restrictions apply to the spectrum lessee as well.

(4) *Designated entity/entrepreneur rules.* A licensee that holds a license pursuant to small business, rural service provider, and/or entrepreneur provisions (*see* § 1.2110 and § 24.709 of this chapter) and continues to be subject to unjust enrichment requirements (*see* § 1.2111 and § 24.714 of this chapter) and/or transfer restrictions (*see* § 24.839 of this chapter) may enter into a spectrum manager leasing arrangement with a spectrum lessee, regardless of whether the spectrum lessee meets the Commission's designated entity eligibility requirements (*see* § 1.2110 of this chapter) or its entrepreneur eligibility requirements to hold certain C and F block licenses in the broadband personal communications services (*see* § 1.2110 and § 24.709 of this chapter), so long as the spectrum manager leasing arrangement does not result in the spectrum lessee's becoming a ''controlling interest'' or ''affiliate'' (*see* § 1.2110 of this chapter) of the licensee such that the licensee would lose its eligibility as a designated entity or entrepreneur.

(5) *Construction/performance requirements.* Any performance or build-out requirement applicable under a license authorization (e.g., a requirement that the licensee construct and operate one or more specific facilities, cover a certain percentage of geographic area, cover a certain percentage of population, or provide substantial service) always remains a condition of the license, and legal responsibility for meeting such obligation is not delegable to the spectrum lessee(s).

(i) The licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of complying with any applicable performance or build-out requirement.

(ii) If a licensee relies on the activities of a spectrum lessee to meet the licensee's performance or build-out obligation, and the spectrum lessee fails to engage in those activities, the Commission will enforce the applicable performance or build-out requirements against the licensee, consistent with the applicable rules.

(iii) If there are rules applicable to the license concerning the discontinuance of operation, the licensee is accountable for any such discontinuance and the rules will be enforced against the licensee regardless of whether the licensee was relying on the activities of a lessee to meet particular performance requirements.

(6) *Regulatory classification*. If the regulatory status of the licensee (e.g., common carrier or non-common carrier status) is prescribed by rule, the regulatory status of the spectrum lessee is prescribed in the same manner, except that §20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a Private Mobile Radio Service (PMRS), private, or noncommercial basis.

(7) *Regulatory fees*. The licensee remains responsible for payment of the required regulatory fees that must be paid in advance of its license term (*see* §1.1152). Where, however, regulatory fees are paid annually on a per-unit basis (such as for Commercial Mobile Radio Services (CMRS) pursuant to §1.1152), the licensee and spectrum lessee are each required to pay fees for those units associated with its respective operations.

(8) *E911 requirements*. If E911 obligations apply to the licensee (see §9.10 of this chapter), the licensee retains the obligations with respect to leased spectrum. However, if the spectrum lessee is a Contraband Interdiction System (CIS) provider, as defined in §1.9003, then the CIS provider is responsible for compliance with §9.10(r) regarding E911 transmission obligations.

(e) *Notifications regarding spectrum manager leasing arrangements*. A licensee that seeks to enter into a spectrum manager leasing arrangement must notify the Commission of the arrangement in advance of the spectrum lessee's commencement of operations under the lease. Unless the license covering the spectrum to be leased is held pursuant to the Commission's designated entity rules and continues to be subject to unjust enrichment requirements and/or transfer restrictions (*see* §§1.2110 and 1.2111, and §§24.709, 24.714, and 24.839 of this chapter) or restrictions in §1.9046 and §96.32 of this chapter, the spectrum manager lease notification will be processed pursuant to either the general notification procedures or the immediate processing procedures, as set forth herein. The licensee must submit the notification to the Commission by electronic filing using the Universal Licensing System (ULS) and FCC Form 608, except that a licensee falling within the provisions of §1.913(d) may file the notification either electronically or manually. If the license covering the spectrum to be leased is held pursuant to the Commission's designated entity rules, the spectrum manager lease will require Commission acceptance of the spectrum manager lease notification prior to the commencement of operations under the lease.

(1) *General notification procedures*. Notifications of spectrum manager leasing arrangements will be processed pursuant to the general notification procedures set forth in this paragraph (e)(1) unless they are submitted and qualify for the immediate processing procedures set forth in paragraph (e)(2) of this section.

(i) To be accepted under these general notification procedures, the notification must be sufficiently complete and contain all information and certifications requested on the applicable form, FCC Form 608, including any information and certifications (including those of the spectrum lessee relating to eligibility, basic qualifications, and foreign ownership) required by the rules in this chapter and any rules pertaining to the specific service for which the notification is filed. No application fees are required for the filing of a spectrum manager leasing notification.

(ii) The licensee must submit such notification at least 21 days in advance of commencing operations unless the arrangement is for a term of one year or less, in which case the licensee must provide notification to the Commission at least ten (10) days in advance of operation. If the licensee and spectrum lessee thereafter seek to extend this leasing arrangement for an additional term beyond the initial term, the licensee must provide the Commission

with notification of the new spectrum leasing arrangement at least 21 days in advance of operation under the extended term.

(iii) A notification filed pursuant to these general notification procedures will be placed on an informational public notice on a weekly basis (*see* §1.933(a)) once accepted, and is subject to reconsideration (*see* §§1.106(f), 1.108, 1.113).

(2) *Immediate processing procedures.* Notifications that meet the requirements of paragraph (e)(2)(i) of this section, and notifications for Contraband Interdiction Systems as defined in §1.9003 that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate processing procedures.

(i) To qualify for these immediate processing procedures, the notification must be sufficiently complete and contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if the spectrum leasing arrangement were consummated, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service), or in the ATC of a Mobile Satellite Service, in which the proposed spectrum lessee already holds a direct or indirect interest of 10% or more (*see* §1.2112), either as a licensee or a spectrum lessee, and that could be used by the spectrum lessee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (*see* §§1.2110 and 1.2111, and §§24.709, 24.714, and 24.839 of this chapter); and,

(C) The spectrum leasing arrangement does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

(ii) A lessee of spectrum used in a Contraband Interdiction System qualifies for these immediate processing procedures if the notification is sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for notifications processed under the general notification procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

(iii) Provided that the notification establishes that the proposed spectrum manager leasing arrangement meets all of the requisite elements to qualify for these immediate processing procedures, ULS will reflect that the notification has been accepted. If a qualifying notification is filed electronically, the acceptance will be reflected in ULS on the next business day after filing of the notification; if filed manually, the acceptance will be reflected in ULS on the next business day after the necessary data from the manually filed notification is entered into ULS. Once the notification has been accepted, as reflected in ULS, the spectrum lessee may commence operations under the spectrum leasing arrangement, consistent with the term of the arrangement.

(iv) A notification filed pursuant to these immediate processing procedures will be placed on an informational public notice on a weekly basis (*see* §1.933(a)) once accepted, and is subject to reconsideration (*see* §§1.106(f), 1.108, 1.113).

(f) *Effective date of a spectrum manager leasing arrangement.* The spectrum manager leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, as of the beginning date of the term as specified in the spectrum leasing notification.

(g) *Commission termination of a spectrum manager leasing arrangement.* The

Commission retains the right to investigate and terminate any spectrum manager leasing arrangement if it determines, post-notification, that the arrangement constitutes an unauthorized transfer of *de facto* control of the leased spectrum, is otherwise in violation of the rules in this chapter, or raises foreign ownership, competitive, or other public interest concerns. Information concerning any such termination will be placed on public notice.

(h) *Expiration, extension, or termination of a spectrum leasing arrangement.* (1) Absent Commission termination or except as provided in paragraph (h)(2) or (h)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the spectrum leasing notification.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification provided that the licensee notifies the Commission of the extension in advance of operation under the extended term and does so pursuant to the general notification procedures or immediate processing procedures set forth in this section, whichever is applicable. If the general notification procedures are applicable, the licensee must notify the Commission at least 21 days in advance of operation under the extended term.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Commission, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Commission consistent with the provisions of this section.

(4) The Commission will place information concerning an extension or an early termination of a spectrum leasing arrangement on public notice.

(i) *Assignment of a spectrum leasing arrangement.* The spectrum lessee may assign its spectrum leasing arrangement to another entity provided that the licensee has agreed to such an assignment, is in privity with the assignee, and notifies the Commission before the consummation of the assignment, pursuant to the applicable notification procedures set forth in this section. In the case of a non-substantial (*pro forma*) assignment that falls within the class of *pro forma* transactions for which prior Commission approval would not be required under §1.948(c)(1), the licensee must file notification of the assignment with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the assignment, whether substantial or *pro forma*, on public notice.

(j) *Transfer of control of a spectrum lessee.* The licensee must notify the Commission of any transfer of control of a spectrum lessee before the consummation of the transfer of control, pursuant to the applicable notification procedures of this section. In the case of a non-substantial (*pro forma*) transfer of control that falls within the class of *pro forma* transactions for which prior Commission approval would not be required under §1.948(c)(1), the licensee must file notification of the transfer of control with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the transfer of control, whether substantial or *pro forma*, on public notice.

(k) *Revocation or automatic cancellation of a license or a spectrum lessee's operating authority.* (1) In the event an authorization held by a licensee that has entered into a spectrum leasing arrangement is revoked or cancelled, the spectrum lessee will be required to terminate its operations no later than the date on which the licensee ceases to have any authority to operate under the license, except as provided in paragraph (j)(2) of this section.

(2) In the event of a license revocation or cancellation, the Commission will consider a request by the spectrum lessee for special temporary authority (*see* §1.931) to provide the spectrum lessee with an opportunity to transition its users in order to minimize service

disruption to business and other activities.

(3) In the event of a license revocation or cancellation, and the required termination of the spectrum lessee's operations, the former spectrum lessee does not, as a result of its former status, receive any preference over any other party should the spectrum lessee seek to obtain the revoked or cancelled license.

(l) *Subleasing*. A spectrum lessee may sublease the leased spectrum usage rights subject to the licensee's consent and the licensee's establishment of privity with the spectrum sublessee. The licensee must submit a notification regarding the spectrum subleasing arrangement in accordance with the applicable notification procedures set forth in this section.

(m) *Renewal*. Although the term of a spectrum manager leasing arrangement may not be longer than the term of a license authorization, a licensee and spectrum lessee that have entered into an arrangement whose term continues to the end of the current term of the license authorization may, contingent on the Commission's grant of the license renewal, renew the spectrum leasing arrangement to extend into the term of the renewed license authorization. The Commission must be notified of the renewal of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal (*see* §1.949). The spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the renewal of the license authorization and the extension of the spectrum leasing arrangement into the term of the renewed license authorization.

(n) *Community notification requirement for certain contraband interdiction systems*. 10 days prior to deploying a Contraband Interdiction System that prevents communications to or from mobile devices, a lessee must notify the community in which the correctional facility is located. The notification must include a description of what the system is intended to do, the date the system is scheduled to begin operating, and the location of the correctional facility. Notification must be tailored to reach the community immediately adjacent to the correctional facility, including through local television, radio, Internet news sources, or community groups, as may be appropriate. No notification is required, however, for brief tests of a system prior to deployment.

[68 FR 66277, Nov. 25, 2003, as amended at 69 FR 72027, Dec. 10, 2004; 69 FR 77551, Dec. 27, 2004; 76 FR 31259, May 31, 2011; 80 FR 56816, Sept. 18, 2015; 81 FR 49065, July 26, 2016; 82 FR 22297, May 15, 2017; 82 FR 22759, May 18, 2017; 84 FR 66760, Dec. 5, 2019; 84 FR 57364, Oct. 25, 2019]

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, §1.9020 was amended by removing ''and,'' at the end of paragraph (e)(2)(i)(B), removing the period at the end of paragraph (e)(2)(i)(C) and adding ''; and'' in its place, and adding paragraph (e)(2)(i)(D), effective Oct. 20, 2022. For the convenience of the user, the added text is set forth as follows:

§ 1.9020 Spectrum manager leasing arrangements.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(D) The application does not involve a transaction in the Enhanced Competition Incentive Program (see subpart EE of this part).

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§ 1.9030 Long-term *de facto* transfer leasing arrangements.

(a) *Overview*. Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a long-term *de facto* transfer leasing arrangement in which the licensee retains *de jure* control of the license while *de facto* control of the leased spectrum is transferred to the spectrum lessee for the duration of the spectrum leasing arrangement, subject to prior Commission consent pursuant to the application procedures set forth in this section. A ''long-term'' *de facto* transfer leasing arrangement has an individual term, or series of combined terms, of more than one year. The term of a long-term *de facto* transfer leasing arrangement may be no longer than the term of the license authorization.

(b) *Rights and responsibilities of the licensee.* (1) Except as provided in paragraph (b)(2) of this section, the licensee is relieved of primary and direct responsibility for ensuring that the spectrum lessee's operations comply with the Communications Act and Commission policies and rules.

(2) The licensee is responsible for its own violations, including those related to its spectrum leasing arrangement with the spectrum lessee, and for ongoing violations or other egregious behavior on the part of the spectrum lessee about which the licensee has knowledge or should have knowledge.

(3) The licensee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(c) *Rights and responsibilities of the spectrum lessee.* (1) The spectrum lessee assumes primary responsibility for complying with the Communications Act and applicable Commission policies and rules.

(2) The spectrum lessee is granted an instrument of authorization pertaining to the *de facto* transfer leasing arrangement that brings it within the scope of the Commission's direct forfeiture provisions under section 503(b) of the Communications Act.

(3) The spectrum lessee is responsible for interacting with the Commission regarding the leased spectrum and for making all related filings (e.g., all applications and notifications, submissions of any materials required to support a required Environmental Assessment, any reports required by Commission rules and applicable to the lessee, information necessary to facilitate international or Interdepartment Radio Advisory Committee (IRAC) coordination).

(4) The spectrum lessee is required to maintain accurate information on file pursuant to Commission rules (*see* § 1.65 of subpart A of this part).

(5) The spectrum lessee must retain a copy of the spectrum leasing agreement and make it available upon request by the Commission.

(d) *Applicability of particular service rules and policies.* Under a long-term *de facto* transfer leasing arrangement, the service rules and policies apply in the following manner to the licensee and spectrum lessee:

(1) *Interference-related rules.* The interference and radiofrequency (RF) safety rules applicable to use of the spectrum by the licensee as a condition of its license authorization also apply to the use of the spectrum leased by the spectrum lessee.

(2) *General eligibility rules.* (i) The spectrum lessee must meet the same eligibility and qualification requirements that are applicable to the licensee under its license authorization. A spectrum lessee entering into a spectrum leasing arrangement involving a licensee in the Public Safety Radio Services (see part 90, subpart B and § 90.311(a)(1)(i) of this chapter) is not required to comply with the eligibility requirements pertaining to such a licensee so long as the spectrum lessee is an entity providing communications in support of public safety operations (see § 90.523(b) of this chapter).

(ii) The spectrum lessee must meet applicable foreign ownership eligibility requirements (see sections 310(a), 310(b) of the Communications Act).

(iii) The spectrum lessee must satisfy any qualification requirements, including character qualifications, applicable to the licensee under its license authorization.

(iv) The spectrum lessee must not be a person subject to denial of Federal benefits under the Anti-Drug Abuse Act of 1988 (*see* § 1.2001 *et seq.* of subpart P of this part).

(3) *Use restrictions.* To the extent that the licensee is restricted from using the licensed spectrum to offer particular services under its license authorization, the use restrictions apply to the spectrum lessee as well.

(4) *Designated entity/entrepreneur rules.* (i) A licensee that holds a license pursuant to small business and/or entrepreneur provisions (*see* § 1.2110 and § 24.709 of this chapter) and continues to be subject to unjust enrichment requirements (*see* § 1.2111 and § 24.714 of this chapter) and/or transfer restrictions (*see* § 24.839 of this chapter) may enter into a long-term *de facto* transfer leasing arrangement with any entity

under the streamlined processing procedures described in this section, subject to any applicable unjust enrichment payment obligations and/or transfer restrictions (*see* §1.2111 and §24.839 of this chapter).

(ii) A licensee holding a license won in closed bidding (*see* §24.709 of this chapter) may, during the first five years of the license term, enter into a spectrum leasing arrangement with an entity not eligible to hold such a license pursuant to the requirements of §24.709(a) of this chapter so long as it has met its five-year construction requirement (*see* §§24.203, 24.839(a)(6) of this chapter).

(iii) The amount of any unjust enrichment payment will be determined by the Commission as part of its review of the application under the same rules that apply in the context of a license assignment or transfer of control (*see* §1.2111 and §24.714 of this chapter). If the spectrum leasing arrangement involves only part of the license area and/or part of the bandwidth covered by the license, the unjust enrichment obligation will be apportioned as though the license were being partitioned and/or disaggregated (*see* §1.2111(c) and §24.714(c) of this chapter). A licensee will receive no reduction in its unjust enrichment payment obligation for a spectrum leasing arrangement that ends prior to the end of the fifth year of the license term.

(iv) A licensee that participates in the Commission's installment payment program (*see* §1.2110(g)) may enter into a long-term de facto transfer leasing arrangement without triggering unjust enrichment obligations provided that the lessee would qualify for as favorable a category of installment payments. A licensee using installment payment financing that seeks to lease to an entity not meeting the eligibility standards for as favorable a category of installment payments must make full payment of the remaining unpaid principal and any unpaid interest accrued through the effective date of the spectrum leasing arrangement (*see* §1.2111(a)). This requirement applies regardless of whether the licensee is leasing all or a portion of its bandwidth and/or license area.

(5) *Construction/performance requirements*. Any performance or build-out requirement applicable under a license authorization (e.g., a requirement that the licensee construct and operate one or more specific facilities, cover a certain percentage of geographic area, cover a certain percentage of population, or provide substantial service) always remains a condition of the license, and the legal responsibility for meeting such obligation is not delegable to the spectrum lessee(s).

(i) The licensee may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of complying with any applicable build-out or performance requirement.

(ii) If a licensee relies on the activities of a spectrum lessee to meet the licensee's performance or build-out obligation, and the spectrum lessee fails to engage in those activities, the Commission will enforce the applicable performance or build-out requirements against the licensee, consistent with the applicable rules.

(iii) If there are rules applicable to the license concerning the discontinuance of operation, the licensee is accountable for any such discontinuance and the rules will be enforced against the licensee regardless of whether the licensee was relying on the activities of a lessee to meet particular performance requirements.

(6) *Regulatory classification*. If the regulatory status of the licensee (e.g., common carrier or non-common carrier status) is prescribed by rule, the regulatory status of the spectrum lessee is prescribed in the same manner, except that §20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a PMRS, private, or non-commercial basis.

(7) *Regulatory fees*. The licensee remains responsible for payment of the required regulatory fees that must be paid in advance of its license term (*see* §1.1152). Where, however, regulatory fees are paid annually on a per-unit basis (such as for CMRS services pursuant to §1.1152), the licensee and spectrum lessee each are required to pay

fees for those units associated with its respective operations.

(8) *E911 requirements*. To the extent the licensee is required to meet E911 obligations (see § 9.10 of this chapter), the spectrum lessee is required to meet those obligations with respect to the spectrum leased under the spectrum leasing arrangement insofar as the spectrum lessee's operations are encompassed within the E911 obligations. If the spectrum lessee is a Contraband Interdiction System (CIS) provider, as defined in § 1.9003, then the CIS provider is responsible for compliance with § 9.10(r) regarding E911 transmission obligations.

(e) *Applications for long-term de facto transfer leasing arrangements*. Applications for long-term *de facto* transfer leasing arrangements will be processed either pursuant to the general approval procedures or the immediate approval procedures, as discussed herein. Spectrum leasing parties must submit the application by electronic filing using ULS and FCC Form 608, and obtain Commission consent prior to consummating the transfer of *de facto* control of the leased spectrum, except that parties falling within the provisions of § 1.913(d) may file the application either electronically or manually.

(1) *General approval procedures*. Applications for long-term *de facto* transfer leasing arrangements will be processed pursuant to the general approval procedures set forth in this paragraph unless they are submitted and qualify for the immediate approval procedures set forth in paragraph (e)(2) of this section.

(i) To be accepted for filing under these general approval procedures, the application must be sufficiently complete and contain all information and certifications requested on the applicable form, FCC Form 608, including any information and certifications (including those of the spectrum lessee relating to eligibility, basic qualifications, and foreign ownership) required by the rules in this chapter and any rules pertaining to the specific service for which the application is filed. In addition, the spectrum leasing application must include payment of the required application fee(s); for purposes of determining the applicable application fee(s), the application will be treated as a transfer of control (*see* § 1.1102).

(ii) Once accepted for filing, the application will be placed on public notice, except no prior public notice will be required for applications involving authorizations in the Private Wireless Services, as specified in § 1.933(d)(9).

(iii) Petitions to deny filed in accordance with section 309(d) of the Communications Act must comply with the provisions of § 1.939, except that such petitions must be filed no later than 14 days following the date of the public notice listing the application as accepted for filing.

(iv) No later than 21 days following the date of the public notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will affirmatively consent to the application, deny the application, or determine to subject the application to further review. For applications for which no prior public notice is required, the Bureau will affirmatively consent to the application, deny the application, or determine to subject the application to further review no later than 21 days following the date on which the application has been filed and any required application fee has been paid (*see* § 1.1102).

(v) If the Bureau determines to subject the application to further review, it will issue a public notice so indicating. Within 90 days following the date of that public notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

(vi) Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(vii) Grant of consent to the application will be reflected in a public notice (*see* § 1.933(a)) promptly issued after the grant, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

(viii) If any petition to deny is filed, and the Bureau grants the application, the Bureau will deny the petition(s) and issue a concise statement of the reason(s) for denial, disposing of all substantive issues raised in the petition(s).

(2) *Immediate approval procedures*. Applications that meet the requirements

of paragraph (e)(2)(i) of this section, and applications for Contraband Interdiction Systems as defined in §1.9003 that meet the requirements of paragraph (e)(2)(ii) of this section, qualify for the immediate approval procedures.

(i) To qualify for the immediate approval procedures, the application must be sufficiently complete, contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership), and include payment of the requisite application fee(s), as required for an application processed under the general approval procedures set forth in paragraph (e)(1)(i) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum licensed in a Wireless Radio Service that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if the spectrum leasing arrangement were consummated, create a geographic overlap with spectrum in any licensed Wireless Service (including the same service) in which the proposed spectrum lessee already holds a direct or indirect interest of 10% or more (*see* §1.2112), either as a licensee or a spectrum lessee, and that could be used by the spectrum lessee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (*see* §§1.2110 and 1.2111, and §§24.709, 24.714, and 24.839 of this chapter); and,

(C) The spectrum leasing arrangement does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

(ii) A lessee of spectrum used in a Contraband Interdiction System qualifies for these immediate approval procedures if the application is sufficiently complete and contains all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership) required for applications processed under the general application procedures set forth in paragraph (e)(1)(i) of this section, and must not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules.

(iii) Provided that the application establishes that it meets all of the requisite elements to qualify for these immediate approval procedures, consent to the *de facto* transfer spectrum leasing arrangement will be reflected in ULS. If the application is filed electronically, consent will be reflected in ULS on the next business day after filing of the application; if filed manually, consent will be reflected in ULS on the next business day after the necessary data from the manually filed application is entered into ULS. Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application, as reflected in ULS.

(iv) Grant of consent to the application under these immediate approval procedures will be reflected in a public notice (*see* §1.933(a)) promptly issued after grant, and is subject to reconsideration (*see* §§1.106(f), 1.108, 1.113).

(f) *Effective date* of a *de facto transfer leasing arrangement*. If the Commission consents to the *de facto* transfer leasing arrangement, the *de facto* transfer leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, on the date set forth in the application. If the Commission consents to the arrangement after that specified date, the spectrum leasing application will become effective on the date of the Commission affirmative consent.

(g) *Expiration, extension, or termination of spectrum leasing arrangement*. (1) Except as provided in paragraph (g)(2) or (g)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the application. The Commission's consent to the *de facto* transfer leasing application includes consent to return the leased spectrum to the licensee at the end of the term of the spectrum leasing arrangement.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing

application pursuant to the applicable application procedures set forth in §1.9030(e). Where there is pending before the Commission at the date of termination of the spectrum leasing arrangement a proper and timely application seeking to extend the arrangement, the parties may continue to operate under the original spectrum leasing arrangement without further action by the Commission until such time as the Commission shall make a final determination with respect to the application.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Commission, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Commission consistent with the provisions of this section.

(4) The Commission will place information concerning an extension or an early termination of a spectrum leasing arrangement on public notice.

(h) *Assignment of spectrum leasing arrangement*. The spectrum lessee may assign its lease to another entity provided that the licensee has agreed to such an assignment, there is privity between the licensee and the assignee, and the assignment is approved by the Commission pursuant to the same application and approval procedures set forth in this section. In the case of a non-substantial (*pro forma*) assignment that falls within the class of *pro forma* transactions for which prior Commission approval would not be required under §1.948(c)(1), the parties involved in the assignment must file notification of the assignment with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the assignment, whether substantial or *pro forma*, on public notice.

(i) *Transfer of control of a spectrum lessee*. A spectrum lessee seeking the transfer of control must obtain Commission consent using the same application and Commission consent procedures set forth in this section. In the case of a non-substantial (*pro forma*) transfer of control that falls within the class of *pro forma* transactions for which prior Commission approval would not be required under §1.948(c)(1), the parties involved in the transfer of control must file notification of the transfer of control with the Commission, using FCC Form 608 and providing any necessary updates of ownership information, within 30 days of its completion. The Commission will place information related to the transfer of control, whether substantial or *pro forma*, on public notice.

(j) *Revocation or automatic cancellation of a license or the spectrum lessee's operating authority*. (1) In the event an authorization held by a licensee that has entered into a spectrum leasing arrangement is revoked or cancelled, the spectrum lessee will be required to terminate its operations no later than the date on which the licensee ceases to have authority to operate under the license, except as provided in paragraph (i)(2) of this section.

(2) In the event of a license revocation or cancellation, the Commission will consider a request by the spectrum lessee for special temporary authority (*see* §1.931) to provide the spectrum lessee with an opportunity to transition its users in order to minimize service disruption to business and other activities.

(3) In the event of a license revocation or cancellation, and the required termination of the spectrum lessee's operations, the former spectrum lessee does not, as a result of its former status, receive any preference over any other party should the spectrum lessee seek to obtain the revoked or cancelled license.

(k) *Subleasing*. A spectrum lessee may sublease spectrum usage rights subject to the following conditions. Parties entering into a spectrum subleasing arrangement are required to comply with the Commission's rules for obtaining approval for spectrum leasing arrangements provided in this subpart and are governed by those same policies. The application filed by parties to a spectrum subleasing arrangement must include written consent from the licensee

to the proposed arrangement. Once a spectrum subleasing arrangement has been approved by the Commission, the sublessee becomes the party primarily responsible for compliance with Commission rules and policies.

(l) *Renewal.* Although the term of a long-term *de facto* transfer spectrum leasing arrangement may not be longer than the term of a license authorization, a licensee and spectrum lessee that have entered into an arrangement whose term continues to the end of the current term of the license authorization may, contingent on the Commission's grant of the license renewal, extend the spectrum leasing arrangement into the term of the renewed license authorization. The Commission must be notified of the renewal of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal (*see* § 1.949). The spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the renewal of the license authorization and the extension of the spectrum leasing arrangement into the term of the renewed license authorization.

(m) *Community notification requirement for certain contraband interdiction systems.* 10 days prior to deploying a Contraband Interdiction System that prevents communications to or from mobile devices, a lessee must notify the community in which the correctional facility is located. The notification must include a description of what the system is intended to do, the date the system is scheduled to begin operating, and the location of the correctional facility. Notification must be tailored to reach the community immediately adjacent to the correctional facility, including through local television, radio, Internet news sources, or community groups, as may be appropriate. No notification is required, however, for brief tests of a system prior to deployment.

[68 FR 66277, Nov. 25, 2003, as amended at 69 FR 72027, Dec. 10, 2004; 69 FR 77554, Dec. 27, 2004; 80 FR 56816, Sept. 18, 2015; 82 FR 22760, May 18, 2017; 84 FR 66760, Dec. 5, 2019; 84 FR 57364, Oct. 25, 2019]

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, § 1.9030 was amended by removing ''and,'' at the end of paragraph (e)(2)(i)(B), removing the period at the end of paragraph (e)(2)(i)(C) and adding ''; and'' in its place, and adding paragraph (e)(2)(i)(D), effective Oct. 20, 2022. For the convenience of the user, the added text is set forth as follows:

§ 1.9030 Long-term *de facto* transfer leasing arrangements.

* * * * *

(e) * * *
(2) * * *
(i) * * *
(D) The application does not involve a transaction in the Enhanced Competition Incentive Program (see subpart EE of this part).

* * * * *

§ 1.9035 Short-term *de facto* transfer leasing arrangements.

(a) *Overview.* Under the provisions of this section, a licensee (in any of the included services) and a spectrum lessee may enter into a short-term *de facto* transfer leasing arrangement in which the licensee retains *de jure* control of the license while *de facto* control of the leased spectrum is transferred to the spectrum lessee for the duration of the spectrum leasing arrangement, subject to prior Commission consent pursuant to the application procedures set forth in this section. A ''short-term'' *de facto* transfer leasing arrangement has an individual or combined term of not longer than one year. The term of a short-term *de facto* transfer leasing arrangement may be no longer than the term of the license authorization.

(b) *Rights and responsibilities of licensee.* The rights and responsibilities applicable to a licensee that enters into a short-term *de facto* transfer leasing arrangement are the same as those applicable to a licensee that enters into a long-term *de facto* transfer leasing arrangement, as set forth in § 1.9030(b).

(c) *Rights and responsibilities of spectrum lessee.* The rights and responsibilities applicable to a spectrum lessee that enters into a short-term *de facto* transfer leasing arrangement are the same as those applicable to a spectrum

lessee that enters into a long-term *de facto* transfer leasing arrangement, as set forth in § 1.9030(c).

(d) *Applicability of particular service rules and policies*. Under a short-term *de facto* leasing arrangement, the service rules and policies apply to the licensee and spectrum lessee in the same manner as under long-term *de facto* transfer leasing arrangements (*see* § 1.9030(d)), except as provided herein:

(1) *Use restrictions and regulatory classification*. Use restrictions applicable to the licensee also apply to the spectrum lessee except that § 20.9(a) of this chapter shall not preclude a licensee in the services covered by that rule from entering into a spectrum leasing arrangement with a spectrum lessee that chooses to operate on a PMRS, private, or non-commercial basis, and except that a licensee with an authorization that restricts use of spectrum to non-commercial uses may enter into a short-term *de facto* transfer leasing arrangement that allows the spectrum lessee to use the spectrum commercially.

(2) *Designated entity/entrepreneur rules*. Unjust enrichment provisions (*see* § 1.2111) and transfer restrictions (*see* § 24.839 of this chapter) do not apply with regard to a short-term *de facto* transfer leasing arrangement.

(3) *Construction/performance requirements*. The licensee is not permitted to attribute to itself the activities of its spectrum lessee when seeking to establish that performance or build-out requirements applicable to the licensee have been met.

(4) *E911 requirements*. If E911 obligations apply to the licensee (see § 9.10 of this chapter), the licensee retains the obligations with respect to leased spectrum. A spectrum lessee entering into a short-term de facto transfer leasing arrangement is not separately required to comply with any such obligations in relation to the leased spectrum. However, if the spectrum lessee is a Contraband Interdiction System (CIS) provider, as defined in § 1.9003, then the CIS provider is responsible for compliance with § 9.10(r) regarding E911 transmission obligations.

(e) *Spectrum leasing application*. Short-term *de facto* transfer leasing arrangements will be processed pursuant to immediate approval procedures, as discussed herein. Parties entering into a short-term *de facto* transfer leasing arrangement are required to file an electronic application with the Commission, using FCC Form 608, and obtain Commission consent prior to consummating the transfer of *de facto* control of the leased spectrum, except that parties falling within the provisions of § 1.913(d) may file the application either electronically or manually.

(1) To be accepted for filing under these immediate approval procedures, the application must be sufficiently complete and contain all information and certifications requested on the applicable form, FCC Form 608, including any information and certifications (including those relating to the spectrum lessee relating to eligibility, basic qualifications, and foreign ownership) required by the rules of this chapter and any rules pertaining to the specific service for which the application is required. In addition, the application must include payment of the required application fee; for purposes of determining the applicable application fee, the application will be treated as a transfer of control (*see* § 1.1102). Finally, the spectrum leasing arrangement must not require a waiver of, or declaratory ruling, pertaining to any applicable Commission rules.

(2) Provided that the application establishes that it meets all of the requisite elements to qualify for these immediate approval procedures, consent to the short-term *de facto* transfer spectrum leasing arrangement will be reflected in ULS. If the application is filed electronically, consent will be reflected in ULS on the next business day after filing of the application; if filed manually, consent will be reflected in ULS on the next business day after the necessary data from the manually filed application is entered into ULS. Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application, as reflected in ULS.

(3) Grant of consent to the application under these procedures will be reflected in a public notice (*see* § 1.933(a)) promptly issued after grant, and is subject to reconsideration (*see* §§ 1.106(f), 1.108, 1.113).

(f) *Effective date of spectrum leasing arrangement*. The spectrum leasing arrangement will be deemed effective in the Commission's records, and for purposes of the application of the rules set forth in this section, on the date set forth in the application. If the Commission consents to the arrangement after that specified date, the spectrum leasing application will become effective on the date of the Commission affirmative consent.

(g) *Restrictions on the use of short-term de facto transfer leasing arrangements*. (1) The licensee and spectrum lessee are not permitted to use the special rules and expedited procedures applicable to short-term *de facto* transfer leasing arrangements for arrangements that in fact will exceed one year, or that the parties reasonably expect to exceed one year.

(2) The licensee and spectrum lessee must submit, in sufficient time prior to the expiration of the short-term *de facto* transfer spectrum leasing arrangement, the appropriate application under the rules and procedures applicable to long-term *de facto* leasing arrangements, and obtain Commission consent pursuant to those procedures.

(h) *Expiration, extension, or termination of the spectrum leasing arrangement*. (1) Except as provided in paragraph (h)(2) or (h)(3) of this section, a spectrum leasing arrangement entered into pursuant to this section will expire on the termination date set forth in the short-term *de facto* transfer leasing arrangement. The Commission's approval of the short-term *de facto* transfer leasing application includes consent to return the leased spectrum to the licensee at the end of the term of the spectrum leasing arrangement.

(2) Upon proper application (*see* paragraph (e) of this section), a short-term *de facto* transfer leasing arrangement may be extended beyond the initial term set forth in the application provided that the initial term and extension(s) together would not result in a leasing arrangement that exceeds a total of one year.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Commission, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Commission consistent with the provisions of this section.

(i) *Conversion of a short-term spectrum leasing arrangement into a long-term de facto transfer leasing arrangement*. (1) In the event the licensee and spectrum lessee involved in a short-term *de facto* transfer leasing arrangement seek to extend the spectrum leasing arrangement beyond the one-year limit for short-term *de facto* transfer leasing arrangements, the parties may do so provided that they meet the conditions set forth in paragraphs (i)(2) and (i)(3) of this section.

(2) If a licensee that holds a license that continues to be subject to transfer restrictions and/or requirements relating to unjust enrichment pursuant to the Commission's small business and/or entrepreneur provisions (*see* § 1.2110 and § 24.709 of this chapter) seeks to extend a short-term *de facto* transfer leasing arrangement with its spectrum lessee (or related entities, as determined pursuant to § 1.2110(b)(2)) beyond one year, it may convert its arrangement into a long-term *de facto* transfer spectrum leasing arrangement provided that it complies with the procedures for entering into a long-term *de facto* transfer leasing arrangement and that it pays any unjust enrichment that would have been owed had the licensee filed a long-term *de facto* transfer spectrum leasing application at the time it applied for the initial short-term *de facto* transfer leasing arrangement.

(3) The licensee and spectrum lessee are not permitted to convert a short-term *de facto* transfer leasing arrangement into a long-term *de facto* transfer leasing arrangement if the parties would have been restricted, in the first instance, from entering into a long-term *de facto* transfer leasing arrangement because of a transfer, use, or other restriction applicable to the particular service (*see* § 1.9030).

(j) *Assignment of spectrum leasing arrangement*. The rule applicable to long-term *de facto* transfer leasing arrangements (*see* § 1.9030(g)) applies in the

same manner to short-term *de facto* transfer leasing arrangements.

(k) *Transfer of control of spectrum lessee*. The rule applicable to long-term *de facto* transfer leasing arrangements (*see* §1.9030(h)) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(l) *Revocation or automatic cancellation of a license or the spectrum lessee's operating authority*. The rule applicable to long-term *de facto* transfer leasing arrangements (see §1.9030(i)) applies in the same manner to short-term *de facto* transfer leasing arrangements.

(m) *Subleasing*. A spectrum lessee that has entered into a short-term *de facto* transfer leasing arrangement is not permitted to enter into a spectrum subleasing arrangement.

(n) *Renewal*. The rule applicable with regard to long-term *de facto* transfer leasing arrangements (*see* §1.9030(l)) applies in the same manner to short-term *de facto* transfer leasing arrangements, except that the renewal of the short-term *de facto* transfer leasing arrangement to extend into the term of the renewed license authorization cannot enable the combined terms of the short-term *de facto* transfer leasing arrangements to exceed one year. The Commission must be notified of the renewal of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal (*see* §1.949).

(o) *Community notification requirement for certain contraband interdiction systems*. 10 days prior to deploying a Contraband Interdiction System that prevents communications to or from mobile devices, a lessee must notify the community in which the correctional facility is located. The notification must include a description of what the system is intended to do, the date the system is scheduled to begin operating, and the location of the correctional facility. Notification must be tailored to reach the community immediately adjacent to the correctional facility, including through local television, radio, Internet news sources, or community groups, as may be appropriate. No notification is required, however, for brief tests of a system prior to deployment.

[68 FR 66277, Nov. 25, 2003, as amended at 69 FR 77557, Dec. 27, 2004; 82 FR 22760, May 18, 2017; 84 FR 66760, Dec. 5, 2019]

EFFECTIVE DATE NOTE: At 69 FR 77557, Dec. 27, 2004, §1.9035(e) was revised. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§1.9040 Contractual requirements applicable to spectrum leasing arrangements.

(a) Agreements between licensees and spectrum lessees concerning spectrum leasing arrangements entered into pursuant to the rules of this subpart must contain the following provisions:

(1) The spectrum lessee must comply at all times with applicable rules set forth in this chapter and other applicable law, and the spectrum leasing arrangement may be revoked, cancelled, or terminated by the licensee or Commission if the spectrum lessee fails to comply with the applicable requirements;

(2) If the license is revoked, cancelled, terminated, or otherwise ceases to be in effect, the spectrum lessee has no continuing authority or right to use the leased spectrum unless otherwise authorized by the Commission;

(3) The spectrum leasing arrangement is not an assignment, sale, or transfer of the license itself;

(4) The spectrum leasing arrangement shall not be assigned to any entity that is ineligible or unqualified to enter into a spectrum leasing arrangement under the applicable rules as set forth in this subpart;

(5) The licensee shall not consent to an assignment of a spectrum leasing arrangement unless such assignment complies with applicable Commission rules and regulations.

(b) Agreements between licensees that hold licenses subject to the Commission's installment payment program (*see* §1.2110 of subpart Q of this part and related service-specific rules) and spectrum lesseeys must contain the following additional provisions:

(1) The express acknowledgement that the license remains subject to the

Commission's priority lien and security interest in the license and related proceeds, consistent with the provisions set forth in § 1.9045; and

(2) The agreement that the spectrum lessee shall not hold itself out to the public as the holder of the license and shall not hold itself out as a licensee by virtue of its having entered into a spectrum leasing arrangement.

§ 1.9045 Requirements for spectrum leasing arrangements entered into by licensees participating in the installment payment program.

(a) If a licensee that holds a license subject to the Commission's installment payment program (*see* § 1.2110 of subpart Q of this part and related service-specific rules) enters into a spectrum leasing arrangement pursuant to the rules in this subpart, the licensee remains fully and solely responsible for the outstanding debt amount owed to the Commission. Nothing in a spectrum leasing arrangement, or arising from a spectrum lessee's bankruptcy or receivership, can modify the licensee's sole responsibility for its obligation to repay its entire debt obligation under the installment payment program pursuant to applicable Commission rules and regulations and the associated note(s) and security agreement(s).

(b) If a licensee holds a license subject to the installment payment program rules (*see* § 1.2110 and related service-specific rules), the licensee and any spectrum lessee must execute the Commission-approved financing documents. No licensee or potential spectrum lessee may file a spectrum leasing notification or application without having first executed such Commission-approved financing documentation. In addition, they must certify in the spectrum leasing notification or application that they have both executed such documentation.

[68 FR 66277, Nov. 25, 2003, as amended at 69 FR 77558, Dec. 27, 2004]

§ 1.9046 Special provisions related to spectrum manager leasing in the Citizens Broadband Radio Service.

(a) *Scope*. Subject to § 96.32 of this chapter, a Priority Access Licensee, as defined in § 96.3 of this chapter, is permitted to engage in spectrum manager leasing for any portion of its spectrum or geographic area, outside of the PAL Protection Area, for any bandwidth or duration period of time within the terms of the license with any entity that has provided a certification to the Commission in accordance with this section or pursuant to the general notification procedures of § 1.9020(e).

(b) *Certification*. The lessee seeking to engage in spectrum manager leasing pursuant to this section must certify with the Commission that it meets the same eligibility and qualification requirements applicable to the licensee before entering into a spectrum manger leasing arrangement with a Priority Access Licensee, as defined in § 96.3 of this chapter and maintain the accuracy of such certifications.

(1) Priority Access Licensees, as defined in § 96.3 of this chapter, are deemed to meet the certification requirements.

(2) Entities may also certify by using the Universal Licensing System and FCC Form 608.

(c) *Notifications regarding spectrum manager leasing arrangements*. Prior to lessee operation, the licensee seeking to engage in spectrum manager leasing pursuant to § 1.9020(e) must submit notification of the leasing arrangement to the Spectrum Access System Administrator, as defined in § 96.3 of this chapter, by electronic filing. The notification shall include the following information:

(1) Lessee contact information including name, address, telephone number, fax number, email address;

(2) Lessee FCC Registration Number (FRN);

(3) Name of Real Party in Interest and related FCC Registration Number (FRN);

(4) The specific spectrum leased (in terms of amount of bandwidth and geographic area involved) including the call sign(s) affected by the lease; and

(5) The duration of the lease.

(d) *Expiration, extension, or termination of a spectrum leasing arrangement*. (1) Absent Commission termination or except as provided in paragraph (d)(2) or (3) of this section, a spectrum leasing arrangement entered into pursuant

to this section will expire on the termination date set forth in the spectrum leasing notification.

(2) A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification for an additional period not to exceed the term of the Priority Access License, as defined in § 96.3 of this chapter, provided that the licensee notifies the Spectrum Access System Administrator, as defined in § 96.3 of this chapter, of the extension in advance of operation under the extended term and does so pursuant to the notification procedures in this section.

(3) If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the Spectrum Access System Administrator, no later than ten (10) days after the early termination, indicating the date of the termination. If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Spectrum Access System Administrator as promptly as practicable.

(e) The Commission will place information concerning the commencement, an extension or an early termination of a spectrum leasing arrangement on public notice.

[81 FR 49065, July 26, 2016]

EFFECTIVE DATE NOTE: At 81 FR 49065, July 26, 2016, § 1.9046 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1.9047 [Reserved]

§ 1.9048 Special provisions relating to spectrum leasing arrangements involving licensees in the Public Safety Radio Services.

Licensees in the Public Safety Radio Services (see part 90, subpart B, and § 90.311(a)(1)(i) of this chapter) may enter into spectrum leasing arrangements with other public safety entities eligible for such a license authorization as well as with entities providing communications in support of public safety operations (see § 90.523(b) of this chapter).

[86 FR 59869, Oct. 29, 2021]

§ 1.9049 Special provisions relating to spectrum leasing arrangements involving the ancillary terrestrial component of Mobile Satellite Services.

(a) A license issued under part 25 of the Commission's rules that provides authority for an ATC will be considered to provide ''exclusive use rights'' for purpose of this subpart of the rules.

(b) For the purpose of this subpart, a Mobile Satellite Service licensee with an ATC authorization may enter into a spectrum manager leasing arrangement with a spectrum lessee (*see* § 1.9020). Notwithstanding the provisions of §§ 1.9030 and 1.9035, a MSS licensee is not permitted to enter into a *de facto* transfer leasing arrangement with a spectrum lessee.

(c) For purposes of § 1.9020(d)(8), the Mobile Satellite Service licensee's obligation, if any, concerning the E911 requirements in § 9.10 of this chapter, will, with respect to an ATC, be specified in the licensing document for the ATC.

(d) The following provision shall apply, in lieu of § 1.9020(m), with respect to spectrum leasing of an ATC:

(1) Although the term of a spectrum manager leasing arrangement may not be longer than the term of the ATC license, a licensee and spectrum lessee that have entered into an arrangement, the term of which continues to the end of the current term of the license may, contingent on the Commission's grant of a modification or renewal of the license to extend the license term, extend the spectrum leasing arrangement into the new license term. The Commission must be notified of the extension of the spectrum leasing arrangement at the same time that the licensee submits the application seeking an extended license term. In the event the parties to the arrangement agree to extend it into the new license term, the spectrum lessee may continue to operate consistent with the terms and conditions of the expired license, without further action by the Commission, until such time as the Commission

makes a final determination with respect to the extension or renewal of the license.

(2) Reserved.

[76 FR 31259, May 31, 2011, as amended at 84 FR 66760, Dec. 5, 2019]

§ 1.9050 Who may sign spectrum leasing notifications and applications.

Under the rules set forth in this subpart, certain notifications and applications to the Commission must be filed by licensees and spectrum lessees that enter into spectrum leasing arrangements. In addition, the rules require that certain notifications and applications be filed by the licensee and/or the spectrum lessee after they have entered into such arrangements. Whether the signature of the licensee, the spectrum lessee, or both, is required will depend on the particular notification or application involved, and whether the leasing arrangement concerns a spectrum manager leasing arrangement or a *de facto* transfer leasing arrangement.

(a) Except as provided in paragraph (b) of this section, the notifications, applications, amendments, and related statements of fact required by the Commission (including certifications) must be signed as follows (either electronically or manually, *see* paragraph (d) of this section):

(1) By the licensee or spectrum lessee, if an individual;

(2) By one of the partners if the licensee or lessee is a partnership;

(3) By an officer, director, or duly authorized employee, if the licensee or lessee is a corporation; or

(4) By a member who is an officer, if the licensee or lessee is an unincorporated association.

(b) Notifications, applications, amendments, and related statements of fact required by the Commission may be signed by the licensee or spectrum lessee's attorney in case of the licensee's or lessee's physical disability or absence from the United States. The attorney shall, when applicable, separately set forth the reason why the application is not signed by the licensee or lessee. In addition, if any matter is stated on the basis of the attorney's belief only (rather than knowledge), the attorney shall separately set forth the reasons for believing that such statements are true. Only the original of notifications, applications, amendments, and related statements of fact need be signed.

(c) Notifications, applications, amendments, and related statements of fact need not be signed under oath. Willful false statements made therein, however, are punishable by fine and imprisonment (*see* 18 U.S.C. section 1001), and by appropriate administrative sanctions, including revocation of license pursuant to section 312(a)(1) of the Communications Act of 1934 or revocation of the spectrum leasing arrangement.

(d) ''Signed,'' as used in this section, means, for manually filed notifications and applications only, an original hand-written signature or, for electronically filed notifications and applications only, an electronic signature. An electronic signature shall consist of the name of the licensee or spectrum lessee transmitted electronically via ULS and entered on the application as a signature.

§ 1.9055 Assignment of file numbers to spectrum leasing notifications and applications.

Spectrum leasing notifications or applications submitted pursuant to the rules of this subpart are assigned file numbers and service codes in order to facilitate processing in the manner in which applications in subpart F are assigned file numbers (*see* § 1.926 of subpart F of this part).

§ 1.9060 Amendments, waivers, and dismissals affecting spectrum leasing notifications and applications.

(a) Notifications and applications regarding spectrum leasing arrangements may be amended in accordance with the policies, procedures, and standards applicable to applications as set forth in subpart F of this part (*see* §§ 1.927 and 1.929 of subpart F of this part).

(b) The Commission may waive specific requirements of the rules affecting spectrum leasing arrangements and the use of leased spectrum, on its own motion or upon request, in accordance with the policies, procedures, and standards set forth in subpart F of this

part (*see* §1.925 of subpart F of this part).

(c) Notifications and pending applications regarding spectrum leasing arrangements may be dismissed in accordance with the policies, procedures, and standards applicable to applications as set forth in subpart F of this part (*see* §1.935 of subpart F of this part).

§ 1.9080 Private commons.

(a) *Overview*. A ''private commons'' arrangement is an arrangement, distinct from a spectrum leasing arrangement but permitted in the same services for which spectrum leasing arrangements are allowed, in which a licensee or spectrum lessee makes certain spectrum usage rights under a particular license authorization available to a class of third-party users employing advanced communications technologies that involve peer-to-peer (device-to-device) communications and that do not involve use of the licensee's or spectrum lessee's end-to-end physical network infrastructure (e.g., base stations, mobile stations, or other related elements). In a private commons arrangement, the licensee or spectrum lessee authorizes users of certain communications devices employing particular technical parameters, as specified by the licensee or spectrum lessee, to operate under the license authorization. A private commons arrangement differs from a spectrum leasing arrangement in that, unlike spectrum leasing arrangements, a private commons arrangement does not involve individually negotiated spectrum access rights with entities that seek to provide network-based services to end-users. A private commons arrangement does not affect unlicensed operations in a particular licensed band to the extent that they are permitted pursuant to part 15.

(b) *Licensee/spectrum lessee responsibilities*. As the manager of any private commons, the licensee or spectrum lessee:

(1) Establishes the technical and operating terms and conditions of use by users of the private commons, including those relating to the types of communications devices that may be used within the private commons, consistent with the terms and conditions of the underlying license authorization;

(2) Retains *de facto* control of the use of spectrum by users within the private commons, including maintaining reasonable oversight over the users' use of the spectrum in the private commons so as to ensure that the use of the spectrum, and communications equipment employed, comply with all applicable technical and service rules (including requirements relating to radio-frequency radiation) and maintaining the ability to ensure such compliance; and,

(3) Retains direct responsibility for ensuring that the users of the private commons, and the equipment employed, comply with all applicable technical and service rules, including requirements relating to radio-frequency radiation and requirements relating to interference.

(c) *Notification requirements*. Prior to permitting users to commence operations within a private commons, the licensee or spectrum lessee must notify the Commission, using FCC Form 608, that it is establishing a private commons arrangement. This notification must include information that describes: the location(s) or coverage area(s) of the private commons under the license authorization; the term of the arrangement; the general terms and conditions for users that would be gaining spectrum access to the private commons; the technical requirements and equipment that the licensee or spectrum lessee has approved for use within the private commons; and, the types of communications uses that are to be allowed within the private commons.

[69 FR 77558, Dec. 27, 2004]

EFFECTIVE DATE NOTE: At 69 FR 77558, Dec. 27, 2004, §1.9080 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart Y—International Bureau Filing System

SOURCE: 69 FR 29895, May 26, 2004, unless otherwise noted. Redesignated at 69 FR 40327, July 2, 2004.

§ 1.10000 What is the purpose of these rules?

(a) These rules are issued under the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*, and the Submarine Cable Landing License Act, 47 U.S.C. 34–39.

(b) This subpart describes procedures for electronic filing of International and Satellite Services applications using the International Bureau Filing System.

(c) More licensing and application descriptions and directions, including but not limited to specifying which International and Satellite service applications must be filed electronically, are in parts 1, 25, 63, and 64 of this chapter.

[69 FR 47793, Aug. 6, 2004]

§ 1.10001 Definitions.

All other applications. We consider all other applications officially filed once you file the application in the International Bureau Filing System (MyIBFS) and applicable filing fees are received and approved by the FCC, unless the application is determined to be fee-exempt. We determine your official filing date based on one of the following situations:

(1) You file your Satellite Space Station Application or your Application for Earth Stations to Access a Non-U.S. Satellite Not Currently Authorized to provide the Proposed Service in the Proposed Frequencies in the United States in MyIBFS.	Your official filing date is the date and time (to the millisecond) you file your application and receive a confirmation of filing and submission ID.
(2) You file all other applications in MyIBFS and then do one of the following:	Your official filing date is:
(i) Pay by online Automatic Clearing House (ACH) payment, online Visa, MasterCard, American Express, or Discover credit card payment, or wire transfer payment denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission (through MyIBFS).	The date your online payment is approved. (*Note:* You will receive a remittance ID and an authorization number if your transaction is successful).
(ii) Determine your application type is fee-exempt or your application qualifies for exemption to charges as provided in this part.	The date you file in MyIBFS and receive a confirmation of filing and submission ID.

Application. A request for an earth or space station radio station license, an international cable landing license, or an international service authorization, or a request to amend a pending application or to modify or renew licenses or authorizations. The term also includes the other requests that may be filed in IBFS such as transfers of control and assignments of license applications, earth station registrations, and foreign carrier affiliation notifications.

Authorizations. Generally, a written document or oral statement issued by us giving authority to operate or provide service.

International Bureau Filing System. The International Bureau Filing System (IBFS) is a database, application filing system, and processing system for all International and Satellite services. IBFS supports electronic filing of many applications and related documents in the International Bureau, and provides public access to this information.

International Services. All international services authorized under parts 1, 63 and 64 of this chapter.

Official Filing Date.

Satellite Space Station Applications (other than DBS and DARS) and Applications for Earth Stations to Access a Non-

U.S. Satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States. We consider a Satellite Space Station application (other than DBS and DARS) and an Application for an Earth Station to Access a Non-U.S. Satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States officially filed the moment you file them through IBFS. The system tracks the date and time of filing (to the millisecond). For purposes of the queue discussed in § 25.158 of this chapter, we will base the order of the applications in the queue on the date and time the applications are filed, rather than the ''Official Filing Date'' as defined here.

Satellite Services. All satellite services authorized under part 25 of this chapter.

Submission ID. The Submission ID is the confirmation number you receive from IBFS once you have successfully filed your application. It is also the number we use to match your filing to your payment. Your IBFS Submission ID will always start with the letters ''IB'' and include the year in which you file as well as a sequential number, (e.g., IB2003000123).

Us. In this subpart, ''us'' refers to the Commission.

We. In this subpart, ''we'' refers to the Commission.

You. In this subpart, ''you'' refers to applicants, licensees, your representatives, or other entities authorized to provide services.

[69 FR 29895, May 26, 2004. Redesignated at 69 FR 40327, July 2, 2004, as amended at 73 FR 9029, Feb. 19, 2008; 85 FR 17284, Mar. 27, 2020]

§ 1.10002 What happens if the rules conflict?

The rules concerning parts 1, 25, 63 and 64 of this chapter govern over the electronic filing in this subpart.

§ 1.10003 When can I start operating?

You can begin operating your facility or providing services once we grant your application to do so, under the conditions set forth in your license or authorization.

§ 1.10004 What am I allowed to do if I am approved?

If you are approved and receive a license or authorization, you must operate in accordance with, and not beyond, your terms of approval.

§ 1.10005 What is IBFS?

(a) The International Bureau Filing System (IBFS) is a database, application filing system, and processing system for all International and Satellite Services. IBFS supports electronic filing of many applications and related documents in the International Bureau, and provides public access to this information.

(b) We maintain applications, notifications, correspondence, and other materials filed electronically with the International Bureau in IBFS.

§ 1.10006 Is electronic filing mandatory?

Electronic filing is mandatory for all applications for international and satellite services for which an International Bureau Filing System (MyIBFS) form is available. Applications for which an electronic form is not available must be filed through the Electronic Comment Filing System (ECFS) in PDF format until new forms are introduced. See §§ 63.20 and 63.53 of this chapter. As each new MyIBFS form becomes available for electronic filing, the Commission will issue a public notice announcing the availability of the new form and the effective date of mandatory filing for this particular type of filing. As each new form becomes effective, manual filings will not be accepted by the Commission and the filings will be returned to the applicant without processing. Mandatory electronic filing requirements for applications for international and satellite services are set forth in this part and parts 25, 63, and 64 of this chapter. A list of forms that are available for electronic filing can be found on the MyIBFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 and the MyIBFS homepage at *http://licensing.fcc.gov/myibfs.*

[85 FR 17284, Mar. 27, 2020]

§ 1.10007 What applications can I file electronically?

(a) For a complete list of applications or notifications that must be filed electronically, log in to the MyIBFS website at *http://licensing.fcc.gov/myibfs*.

(b) Many applications require exhibits or attachments. If attachments are required, you must attach documentation to your electronic application before filing. We accept attachments in the following formats: Word, Adobe Acrobat, Excel and Text.

(c) For paper filing rules and procedures, see parts 1, 25, 63 or 64.

[69 FR 29895, May 26, 2004. Redesignated at 69 FR 40327, July 2, 2004. Amended at 69 FR 47793, Aug. 6, 2004; 70 FR 38797, July 6, 2005; 85 FR 17284, Mar. 27, 2020]

§ 1.10008 What are IBFS file numbers?

(a) We assign file numbers to electronic applications in order to facilitate processing.

(b) We only assign file numbers for administrative convenience; they do not mean that an application is acceptable for filing.

(c) For a description of file number information, see The International Bureau Filing System File Number Format Public Notice, DA–04–568 (released February 27, 2004).

§ 1.10009 What are the steps for electronic filing?

(a) *Step 1: Register for an FCC Registration Number (FRN).* (See subpart W, §§ 1.8001 through 1.8004.)

(1) If you already have an FRN, go to Step 2.

(2) In order to process your electronic application, you must have an FRN. You may obtain an FRN either directly from the Commission Registration System (CORES) at *http://www.fcc.gov/e-file/*, or through IBFS as part of your filing process. If you need to know more about who needs an FRN, visit CORES at *http://www.fcc.gov/e-file/*.

(3) If you are a(n):

(i) Applicant,

(ii) Transferee and assignee,

(iii) Transferor and assignor,

(iv) Licensee/Authorization Holder, or

(v) Payer, you are required to have and use an FRN when filing applications and/or paying fees through IBFS.

(4) We use your FRN to give you secured access to IBFS and to pre-fill the application you file.

(b) *Step 2: Register with IBFS.* (1) If you are already registered with IBFS, go to Step 3.

(2) In order to complete and file your electronic application, you must register in IBFS, located at *http://www.fcc.gov/ibfs*.

(3) You can register your account in:

(i) Your name,

(ii) Your company's name, or

(iii) Your client's name.

(4) IBFS will issue you an account number as part of the registration process. You will create your own password.

(5) If you forget your password, send an e-mail to the IBFS helpline at *ibfsinfo@fcc.gov* or contact the helpline at (202) 418–2222 for assistance.

(c) *Step 3: Log into IBFS, select the application you want to file, provide the required FRN(s) and password(s) and fill out your application.* You must completely fill out forms and provide all requested information as provided in parts 1, 25, 63 and 64 of this chapter.

(1) You must provide an address where you can receive mail delivery by the United States Postal Service. You are also encouraged to provide an e-mail address. This information is used to contact you regarding your application and to request additional documentation, if necessary.

(2) *Reference to material on file.* You must answer questions on application forms that call for specific technical data, or that require yes or no answers or other short answers. However, if documents or other lengthy showings are already on file with us and contain the required information, you may incorporate the information by reference, as long as:

(i) The referenced information is filed in MyIBFS.

(ii) The referenced information is current and accurate in all material respects; and

(iii) The application states where we can find the referenced information as well as:

(A) The application file number, if the reference is to previously-filed applications

(B) The title of the proceeding, the docket number, and any legal citation, if the reference is to a docketed proceeding.

(d) *Step 4: File your application*. If you file your application successfully through IBFS, a confirmation screen will appear showing you the date and time of your filing and your submission ID. Print this verification for your records as proof of online filing.

(e) *Step 5: Pay for your application*. (1) Most applications require that you pay a fee to us before we can begin processing your application. You can determine the amount of your fee in three ways:

(i) You can refer to § 1.1107,

(ii) You can refer to the International and Satellite Services fee guide located at *http://www.fcc.gov/fees/appfees.html*, or

(iii) You can run a draft electronic submission of payment online form through MyIBFS, in association with a filed application, and the system will automatically enter your required fee on the form.

(2)(i) A complete FCC electronic submission of payment online form must accompany all fee payments. You must provide the FRN for both the applicant and the payer. You also must include your International Bureau (IB) submission ID number on the electronic submission of payment online form in the box labeled ''FCC Code 2.'' In addition, for applications for transfer of control or assignment of license, call signs involved in the transaction must be entered into the ''FCC Code 1'' box on the FCC electronic submission of payment online form. (This may require the use of multiple rows on the electronic submission of payment online form for a single application where more than one call sign is involved.)

(ii) You can generate a pre-filled FCC electronic submission of payment online form from MyIBFS using your IB submission ID. For specific instructions on using MyIBFS to generate your FCC electronic submission of payment online form, go to the MyIBFS website (*http://licensing.fcc.gov/myibfs*) and click on the ''Getting Started'' button.

(3) You have 3 payment options:

(i) Pay by credit card (through MyIBFS);

(ii) Pay by online Automatic Clearing House (ACH) payment; or

(iii) Pay by wire transfer or other electronic payments.

(4) You must electronically submit payment on the date you file your application in MyIBFS. If not, we will dismiss your application.

(5) For more information on fee payments, refer to Payment Instructions found on the MyIBFS internet site at *http://licensing.fcc.gov/myibfs*, under the Using IBFS link.

[73 FR 9029, Feb. 19, 2008, as amended at 85 FR 17284, Mar. 27, 2020]

§ 1.10010 Do I need to send paper copies with my electronic applications?

When you file electronically through MyIBFS, the electronic record is the official record. You do not need to submit paper copies of your application.

[85 FR 17285, Mar. 27, 2020]

§ 1.10011 Who may sign applications?

(a) The Commission only accepts electronic applications. An electronic application is ''signed'' when there is an electronic signature. An electronic signature is the typed name of the person ''signing'' the application, which is then electronically transmitted via MyIBFS.

(b) For all electronically filed applications, you (or the signor) must actually sign a paper copy of the application, and keep the signed original in your files for future reference.

(c) You only need to sign the original of applications, amendments, and related statements of fact.

(d) Sign applications, amendments, and related statements of fact as follows:

(1) By you, if you are an individual;

(2) By one of the partners, if you are a partnership;

(3) By an officer, director, or duly authorized employee, if you are a corporation; or

(4) By a member who is an officer, if you are an unauthorized association.

(e) If you file applications, amendments, and related statements of fact on behalf of eligible government entities, an elected or appointed official who may sign under the laws of the applicable jurisdiction must sign the document. Eligible government entities are:

(1) States and territories of the United States,

(2) Political subdivisions of these states and territories,

(3) The District of Columbia, and

(4) Units of local government.

(f) If you are either physically disabled or absent from the United States, your attorney may sign applications, amendments and related statements of facts on your behalf.

(1) Your attorney must explain why you are not signing the documents.

(2) If your attorney states any matter based solely on his belief (rather than knowledge), your attorney must explain his reasons for believing that such statements are true.

(g) It is unnecessary to sign applications, amendments, and related statements of fact under oath. However, willful false statements are punishable by a fine and imprisonment, 18 U.S.C. 1001, and by administrative sanctions.

[69 FR 40327, July 2, 2004, as amended at 85 FR 17285, Mar. 27, 2020]

§ 1.10012 When can I file on IBFS?

IBFS is available 24 hours a day, seven (7) days a week for filing.

§ 1.10013 How do I check the status of my application after I file it?

You can check the status of your application through the ''Search Tools'' on the IBFS homepage. The IBFS homepage is located at *www.fcc.gov/ibfs*.

§ 1.10014 What happens after officially filing my application?

(a) We give you an IBFS file number.

(b) We electronically route your application to an analyst who conducts an initial review of your application. If your application is incomplete, we will either dismiss the application, or contact you by telephone, letter or email to ask for additional information within a specific time. In cases where we ask for additional information, if we do not receive it within the specified time, we will dismiss your application. In either case, we will dismiss your application without prejudice, so that you may file again with a complete application.

(c) If your application is complete, and we verify receipt of your payment, it will appear on an ''Accepted for Filing'' Public Notice, unless public notice is not required. An ''Accepted for Filing'' Public Notice gives the public a certain amount of time to comment on your filing. This period varies depending upon the type of application.

(1) Certain applications do not have to go on an ''Accepted for Filing'' Public Notice prior to initiation of service, but instead are filed as notifications to the Commission of prior actions by the carriers as authorized by the rules. Examples include pro forma notifications of transfer of control and assignment and certain foreign carrier notifications.

(2) Each ''Accepted for Filing'' Public Notice has a report number. Examples of various types of applications and their corresponding report number (the ''x'' represents a sequential number) follow.

Type of application	Report No.
325–C Applications	325–xxxxx.
Accounting Rate Change	ARC–xxxxx.
Foreign Carrier Affiliation Notification	FCN–xxxxx.
International High Frequency	IHF–xxxxx.
Recognized Operating Agency	ROA–xxxxx.
Satellite Space Station	SAT–xxxxx.
Satellite Earth Station	SES–xxxxx.
International Telecommunications:	
Streamlined	TEL–xxxxxS.
Non-streamlined	TEL–xxxxxNS and/or DA.
Submarine Cable Landing:	
Streamlined	SCL–xxxxxS.
Non-streamlined	SCL–xxxxxNS and/or DA.

(d) After the Public Notice, your application may undergo legal, technical and/or financial review as deemed necessary. In addition, some applications require coordination with other government agencies.

(e) After review, we decide whether to grant or deny applications or whether to take other necessary action. Grants, denials and any other necessary actions are noted in the IBFS database. Some filings may not require any affirmative action, such as some Foreign Carrier Affiliation Notification Filings. Other filings, such as some International Section 214 Applications, International Accounting Rate Change Filings and Requests for assignment of Data Network Identification Codes, may be granted automatically on a specific date unless the applicant is notified otherwise prior to that date, as specified in the rules.

(f) We list most actions taken on public notices. Each ''Action Taken'' Public Notice has a report number. Examples of various types of applications and their corresponding report number (the ''x'' represents a sequential number) follow.

Type of application	Report No.
325–C Applications	325–xxxxx.
Accounting Rate Change	No action taken PN released.
Foreign Carrier Affiliation Notification	No action taken PN released.
International High Frequency	IHF–xxxxx.
Recognized Operating Agency	No action taken PN released.
Satellite Space Station	SAT–xxxxx (occasionally).
Satellite Earth Station	SES–xxxxx.
International Telecommunications	TEL–xxxxx and DA.
Submarine Cable Landing	TEL–xxxxx and DA.

(g) Other actions are taken by formal written Order, oral actions that are followed up with a written document, or grant stamp of the application. In all cases, the action dates are available online through the IBFS system.

(h) Issuing and Mailing Licenses for Granted Applications. Not all applications handled through IBFS and granted by the Commission result in the issuance of a paper license or authorization. A list of application types and their corresponding authorizations follows.

Type of application	Type of license/authorization issued
325–C Application	FCC permit mailed to permittee or contact, as specified in the application.
Accounting Rate Change	No authorizing document is issued by the Commission. In some cases, a Commission order may be issued related to an Accounting Rate Change filing.
Data Network Identification Code Filing	Letter confirming the grant of a new DNIC or the reassignment of an existing DNIC is mailed to the applicant or its designated representative.
Foreign Carrier Affiliation Notification	No authorizing document is issued by the Commission. In some cases, a Commission order may be issued related to a Foreign Carrier Affiliation Notification.
International High Frequency:	
Construction Permits, Licenses, Modifications, Renewals, and Transfers of Control/Assignment of License.	For all applications, an original, stamped authorization is issued to the applicant and a copy of the authorization is sent to the specified contact.
Recognized Operating Agency	The FCC sends a letter to the Department of State requesting grant or denial of recognized operating agency status. (The applicant is mailed a courtesy copy.) The Department of State issues a letter to both the Commission and the Applicant advising of their decision.
Satellite Space Station:	
1. Request for Special Temporary Authority.	1. Letter, grant-stamped request, or short order.
2. New Authorization	2. Generally issued by Commission Order.
3. Amendment	3. Generally issued as part of a Commission Order acting upon the underlying application.
4. Modification	4. Generally issued by Commission Order.
5. Transfer of Control/Assignment of License.	5. Generally issued by Commission Order or Public Notice. Also, Form A–732 authorization issued and mailed to applicant (original), parties to the transaction, and the applicant's specified contact (copy).

Type of application	Type of license/authorization issued
Satellite Earth Station:	
1. Request for Special Temporary Authority.	1. Letter, grant-stamped request, or short order.
2. New Authorization	2. License issued and mailed to applicant (original) and specified contact (copy).
3. Amendment	3. If granted, the action is incorporated into the license for the underlying application.
4. Modification	4. License issued and mailed to applicant (original) and specified contact (copy).
5. Renewal	5. License issued and mailed to applicant (original) and specified contact (copy).
6. Transfer of Control/Assignment of License.	6. If granted, Form A–732 authorization issued and mailed to applicant (original), parties to the transaction, and the applicant's specified contact (copy).
International Telecommunications—Section 214:	
1. Streamlined (New, Transfer of Control, Assignment).	1. Action Taken Public Notice serves as the authorization document. This notice is issued weekly and is available online both at IBFS (*http://www.fcc.gov/ibfs*) and the Electronic Document Management System (EDOCS) (*http://www.fcc.gov/e-file/*).
2. Non-streamlined (New, Transfer of Control, Assignment).	2. Decisions are generally issued by PN; some are done by Commission Order.
3. Request for Special Temporary Authority.	3. Letter, grant-stamped request issued to applicant.
International Signaling Point Code Filing	Letter issued to applicant.
Submarine Cable Landing License Application:	
1. Streamlined (New, Transfer of Control, Assignment).	1. Action Taken Public Notice serves as the authorization document. This notice is issued weekly and is available online both at IBFS, which can be found at *http://www.fcc.gov/ibfs,* and the Electronic Document Management System (EDOCS), which can be found at *http://www.fcc.gov/e-file/.*
2. Non-Streamlined (New, Transfer of Control, Assignment).	2. Decisions are generally issued by PN; some are done by Commission Order.

[69 FR 29895, May 26, 2004, as amended at 76 FR 70910, Nov. 16, 2011]

§ 1.10015 Are there exceptions for emergency filings?

(a) Sometimes we grant licenses, modifications or renewals even if no one files an application. Instances where this may occur include:

(1) If we find there is an emergency involving danger to life or property, or because equipment is damaged;

(2) If the President proclaims, or if Congress declares, a national emergency;

(3) During any war in which the United States is engaged and when grants, modifications or renewals are necessary for national defense, security or in furtherance of the war effort; or

(4) If there is an emergency where we find that it is not feasible to secure renewal applications from existing licensees or to follow normal licensing procedures.

(b) Emergency authorizations stop at the end of emergency periods or wars. After the emergency period or war, you must submit your request by filing the appropriate form electronically.

(c) The procedures for emergency requests, as described in this section, are as specified in §§ 25.120 and 63.25 of this chapter.

[69 FR 40327, July 2, 2004, as amended at 85 FR 17285, Mar. 27, 2020]

§ 1.10016 How do I apply for special temporary authority?

(a) Requests for Special Temporary Authority (STA) may be filed via IBFS for most services. We encourage you to file STA applications through IBFS as it will ensure faster receipt of your request.

(b) For specific information on the content of your request, refer to §§ 25.120 and 63.25 of this chapter.

§ 1.10017 How can I submit additional information?

In response to an official request for information from the International Bureau, you can submit additional information electronically directly to the requestor, or by mail to the Office of the Secretary, Attention: International Bureau.

§ 1.10018 May I amend my application?

(a) If the service rules allow, you may amend pending applications.

(b) If an electronic version of an amendment application is available in

IBFS, you may file your amendment electronically through IBFS.

Subpart Z—Communications Assistance for Law Enforcement Act

SOURCE: 71 FR 38108, July 5, 2006, unless otherwise noted.

§ 1.20000 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act (CALEA), Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains rules that require a telecommunications carrier to:

(a) Ensure that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with appropriate legal authorization, appropriate carrier authorization, and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission; and

(b) Implement the assistance capability requirements of CALEA section 103, 47 U.S.C. 1002, to ensure law enforcement access to authorized wire and electronic communications or call-identifying information.

§ 1.20001 Scope.

The definitions included in 47 CFR 1.20002 shall be used solely for the purpose of implementing CALEA requirements.

§ 1.20002 Definitions.

For purposes of this subpart:

(a) *Appropriate legal authorization.* The term *appropriate legal authorization* means:

(1) A court order signed by a judge or magistrate authorizing or approving interception of wire or electronic communications; or

(2) Other authorization, pursuant to 18 U.S.C. 2518(7), or any other relevant federal or state statute.

(b) *Appropriate carrier authorization.* The term *appropriate carrier authorization* means the policies and procedures adopted by telecommunications carriers to supervise and control officers and employees authorized to assist law enforcement in conducting any interception of communications or access to call-identifying information.

(c) *Appropriate authorization.* The term *appropriate authorization* means both appropriate legal authorization and appropriate carrier authorization.

(d) *LEA.* The term *LEA* means law enforcement agency; e.g., the Federal Bureau of Investigation or a local police department.

(e) *Telecommunications carrier.* The term *telecommunications carrier* includes:

(1) A person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire;

(2) A person or entity engaged in providing commercial mobile service (as defined in sec. 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))); or

(3) A person or entity that the Commission has found is engaged in providing wire or electronic communication switching or transmission service such that the service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of CALEA.

§ 1.20003 Policies and procedures for employee supervision and control.

A telecommunications carrier shall:

(a) Appoint a senior officer or employee responsible for ensuring that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier.

(b) Establish policies and procedures to implement paragraph (a) of this section, to include:

(1) A statement that carrier personnel must receive appropriate legal authorization and appropriate carrier authorization before enabling law enforcement officials and carrier personnel to implement the interception

of communications or access to call-identifying information;

(2) An interpretation of the phrase ''appropriate authorization'' that encompasses the definitions of appropriate legal authorization and appropriate carrier authorization, as used in paragraph (b)(1) of this section;

(3) A detailed description of how long it will maintain its records of each interception of communications or access to call-identifying information pursuant to § 1.20004;

(4) In a separate appendix to the policies and procedures document:

(i) The name and a description of the job function of the senior officer or employee appointed pursuant to paragraph (a) of this section; and

(ii) Information necessary for law enforcement agencies to contact the senior officer or employee appointed pursuant to paragraph (a) of this section or other CALEA points of contact on a seven days a week, 24 hours a day basis.

(c) Report to the affected law enforcement agencies, within a reasonable time upon discovery:

(1) Any act of compromise of a lawful interception of communications or access to call-identifying information to unauthorized persons or entities; and

(2) Any act of unlawful electronic surveillance that occurred on its premises.

§ 1.20004 Maintaining secure and accurate records.

(a) A telecommunications carrier shall maintain a secure and accurate record of each interception of communications or access to call-identifying information, made with or without appropriate authorization, in the form of single certification.

(1) This certification must include, at a minimum, the following information:

(i) The telephone number(s) and/or circuit identification numbers involved;

(ii) The start date and time that the carrier enables the interception of communications or access to call identifying information;

(iii) The identity of the law enforcement officer presenting the authorization;

(iv) The name of the person signing the appropriate legal authorization;

(v) The type of interception of communications or access to call-identifying information (e.g., pen register, trap and trace, Title III, FISA); and

(vi) The name of the telecommunications carriers' personnel who is responsible for overseeing the interception of communication or access to call-identifying information and who is acting in accordance with the carriers' policies established under § 1.20003.

(2) This certification must be signed by the individual who is responsible for overseeing the interception of communications or access to call-identifying information and who is acting in accordance with the telecommunications carrier's policies established under § 1.20003. This individual will, by his/her signature, certify that the record is complete and accurate.

(3) This certification must be compiled either contemporaneously with, or within a reasonable period of time after the initiation of the interception of the communications or access to call-identifying information.

(4) A telecommunications carrier may satisfy the obligations of paragraph (a) of this section by requiring the individual who is responsible for overseeing the interception of communication or access to call-identifying information and who is acting in accordance with the carriers' policies established under § 1.20003 to sign the certification and append the appropriate legal authorization and any extensions that have been granted. This form of certification must at a minimum include all of the information listed in paragraph (a) of this section.

(b) A telecommunications carrier shall maintain the secure and accurate records set forth in paragraph (a) of this section for a reasonable period of time as determined by the carrier.

(c) It is the telecommunications carrier's responsibility to ensure its records are complete and accurate.

(d) Violation of this rule is subject to the penalties of § 1.20008.

[71 FR 38108, July 5, 2006]

§ 1.20005 Submission of policies and procedures and Commission review.

(a) Each telecommunications carrier shall file with the Commission the

policies and procedures it uses to comply with the requirements of this subchapter. These policies and procedures shall be filed with the Federal Communications Commission within 90 days of the effective date of these rules, and thereafter, within 90 days of a carrier's merger or divestiture or a carrier's amendment of its existing policies and procedures.

(b) The Commission shall review each telecommunications carrier's policies and procedures to determine whether they comply with the requirements of §§ 1.20003 and 1.20004.

(1) If, upon review, the Commission determines that a telecommunications carrier's policies and procedures do not comply with the requirements established under §§ 1.20003 and 1.20004, the telecommunications carrier shall modify its policies and procedures in accordance with an order released by the Commission.

(2) The Commission shall review and order modification of a telecommunications carrier's policies and procedures as may be necessary to insure compliance by telecommunications carriers with the requirements of the regulations prescribed under §§ 1.20003 and 1.20004.

[71 FR 38108, July 5, 2006]

§ 1.20006 Assistance capability requirements.

(a) Telecommunications carriers shall provide to a Law Enforcement Agency the assistance capability requirements of CALEA regarding wire and electronic communications and call-identifying information, see 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J–STD–025 (current version), or by the Commission.

(b) Telecommunications carriers shall consult, as necessary, in a timely fashion with manufacturers of its telecommunications transmission and switching equipment and its providers of telecommunications support services for the purpose of ensuring that current and planned equipment, facilities, and services comply with the assistance capability requirements of 47 U.S.C. 1002.

(c) A manufacturer of telecommunications transmission or switching equipment and a provider of telecommunications support service shall, on a reasonably timely basis and at a reasonable charge, make available to the telecommunications carriers using its equipment, facilities, or services such features or modifications as are necessary to permit such carriers to comply with the assistance capability requirements of 47 U.S.C. 1002.

§ 1.20007 Additional assistance capability requirements for wireline, cellular, and PCS telecommunications carriers.

(a) *Definition*—(1) *Call-identifying information*. Call identifying information means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier. Call-identifying information is ''reasonably available'' to a carrier if it is present at an intercept access point and can be made available without the carrier being unduly burdened with network modifications.

(2) *Collection function*. The location where lawfully authorized intercepted communications and call-identifying information is collected by a law enforcement agency (LEA).

(3) *Content of subject-initiated conference calls*. Capability that permits a LEA to monitor the content of conversations by all parties connected via a conference call when the facilities under surveillance maintain a circuit connection to the call.

(4) *Destination*. A party or place to which a call is being made (e.g., the called party).

(5) Dialed digit extraction. Capability that permits a LEA to receive on the call data channel digits dialed by a subject after a call is connected to another carrier's service for processing and routing.

(6) *Direction*. A party or place to which a call is re-directed or the party

or place from which it came, either incoming or outgoing (e.g., a redirected-to party or redirected-from party).

(7) *IAP*. Intercept access point is a point within a carrier's system where some of the communications or call-identifying information of an intercept subject's equipment, facilities, and services are accessed.

(8) *In-band and out-of-band signaling*. Capability that permits a LEA to be informed when a network message that provides call identifying information (e.g., ringing, busy, call waiting signal, message light) is generated or sent by the IAP switch to a subject using the facilities under surveillance. Excludes signals generated by customer premises equipment when no network signal is generated.

(9) *J–STD–025*. The standard, including the latest version, developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS) for wireline, cellular, and broadband PCS carriers. This standard defines services and features to support lawfully authorized electronic surveillance, and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA. Subsequently, TIA and ATIS published J–STD–025–A and J–STD–025–B.

(10) *Origin*. A party initiating a call (e.g., a calling party), or a place from which a call is initiated.

(11) *Party hold, join, drop on conference calls*. Capability that permits a LEA to identify the parties to a conference call conversation at all times.

(12) *Subject-initiated dialing and signaling information*. Capability that permits a LEA to be informed when a subject using the facilities under surveillance uses services that provide call identifying information, such as call forwarding, call waiting, call hold, and three-way calling. Excludes signals generated by customer premises equipment when no network signal is generated.

(13) *Termination*. A party or place at the end of a communication path (e.g. the called or call-receiving party, or the switch of a party that has placed another party on hold).

(14) *Timing information*. Capability that permits a LEA to associate call-identifying information with the content of a call. A call-identifying message must be sent from the carrier's IAP to the LEA's Collection Function within eight seconds of receipt of that message by the IAP at least 95% of the time, and with the call event time-stamped to an accuracy of at least 200 milliseconds.

(b) In addition to the requirements in § 1.20006, wireline, cellular, and PCS telecommunications carriers shall provide to a LEA the assistance capability requirements regarding wire and electronic communications and call identifying information covered by J–STD–025 (current version), and, subject to the definitions in this section, may satisfy these requirements by complying with J–STD–025 (current version), or by another means of their own choosing. These carriers also shall provide to a LEA the following capabilities:

(1) Content of subject-initiated conference calls;

(2) Party hold, join, drop on conference calls;

(3) Subject-initiated dialing and signaling information;

(4) In-band and out-of-band signaling;

(5) Timing information;

(6) Dialed digit extraction, with a toggle feature that can activate/deactivate this capability.

[71 FR 38108, July 5, 2006, as amended at 76 FR 70911, Nov. 16, 2011]

§ 1.20008 Penalties.

In the event of a telecommunications carrier's violation of this subchapter, the Commission shall enforce the penalties articulated in 47 U.S.C. 503(b) of the Communications Act of 1934 and 47 CFR 1.80.

Subpart AA—Competitive Bidding for Universal Service Support

SOURCE: 76 FR 73851, Nov. 29, 2011, unless otherwise noted.

§ 1.21000 Purpose.

This subpart sets forth procedures for competitive bidding to determine the recipients of universal service support pursuant to part 54 of this chapter and

the amount(s) of support that each recipient respectively may receive, subject to post-auction procedures, when the Commission directs that such support shall be determined through competitive bidding.

§ 1.21001 Participation in competitive bidding for support.

(a) *Public Notice of the Application Process.* The dates and procedures for submitting applications to participate in competitive bidding pursuant to this subpart shall be announced by public notice.

(b) *Application contents.* Unless otherwise established by public notice, an applicant to participate in competitive bidding pursuant to this subpart shall provide the following information in an acceptable form:

(1) The identity of the applicant, *i.e.*, the party that seeks support, and the ownership information as set forth in § 1.2112(a);

(2) The identities of up to three individuals authorized to make or withdraw a bid on behalf of the applicant. No person may serve as an authorized bidder for more than one auction applicant;

(3) The identities of all real parties in interest to, and a brief description of, any agreements relating to the participation of the applicant in the competitive bidding;

(4) Certification that the applicant has provided in its application a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the applicant's participation in the competitive bidding and the support being sought, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific areas on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls as defined in paragraph (d)(1) of this section or is controlled by the applicant, is a party;

(5) Certification that the applicant (or any party that controls as defined in paragraph (d)(1) of this section or is controlled by the applicant) has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the support to be sought that address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific areas on which to bid or not to bid for support), or post-auction market structure with any other applicant (or any party that controls or is controlled by another applicant);

(6) Certification that if the applicant has ownership or other interest disclosed pursuant to paragraph (b)(1) of this section with respect to more than one application in a given auction, it will implement internal controls that preclude any individual acting on behalf of the applicant as defined in § 1.21002(a) from possessing information about the bids or bidding strategies (including post-auction market structure), of more than one party submitting an application for the auction or communicating such information with respect to a party submitting an application for the auction to anyone possessing such information regarding another party submitting an application for the auction;

(7) Certification that the applicant has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the obligations applicable to the type of support it wins and the Commission's rules generally;

(8) Certification that the applicant and all applicable parties have complied with and will continue to comply with § 1.21002;

(9) Certification that the applicant is in compliance with all statutory and regulatory requirements for receiving the universal service support that the applicant seeks, or, if expressly allowed by the rules specific to a high-cost support mechanism, a certification that the applicant acknowledges that it must be in compliance with such requirements before being authorized to receive support;

(10) Certification that the applicant will be subject to a default payment or a forfeiture in the event of an auction default and that the applicant will make any payment that may be required pursuant to §1.21004;

(11) Certification that the applicant is not delinquent on any debt owed to the Commission and that it is not delinquent on any non-tax debt owed to any Federal agency as of the deadline for submitting applications to participate in competitive bidding pursuant to this subpart, or that it will cure any such delinquency prior to the end of the application resubmission period established by public notice.

(12) Certification that the individual submitting the application is authorized to do so on behalf of the applicant; and

(13) Such additional information as may be required.

(c) *Limit on filing applications.* In any auction, no individual or entity may file more than one application to participate in competitive bidding or have a controlling interest (as defined in paragraph (d)(1) of this section) in more than one application to participate in competitive bidding. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium. In the event that applications for an auction are filed by applicants with overlapping controlling interests, pursuant to paragraph (f)(3) of this section, both applications will be deemed incomplete and only one such applicant may be deemed qualified to bid.

(d) *Definitions.* For purposes of the certifications required under paragraph (b) of this section and the limit on filing applications in paragraph (c) of this section:

(1) The term *controlling interest* includes individuals or entities with positive or negative *de jure* or *de facto* control of the applicant. *De jure* control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. *De facto* control is determined on a case-by-case basis. Examples of *de facto* control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the support recipient; or playing an integral role in management decisions. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium.

(2) The term *consortium* means an entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities.

(3) The term *joint venture* means a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities.

(e) *Financial Requirements for Participation.* As a prerequisite to participating in competitive bidding, an applicant may be required to post a bond or place funds on deposit with the Commission in an amount based on the default payment or forfeiture that may be required pursuant to §1.21004. The details of and deadline for posting such a bond or making such a deposit will be announced by public notice. No interest will be paid on any funds placed on deposit.

(f) *Application Processing.* (1) Any timely submitted application will be reviewed by Commission staff for completeness and compliance with the Commission's rules. No untimely applications will be reviewed or considered.

(2) Any application to participate in competitive bidding that does not identify the applicant or does not include all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to the applicable deadline for

submitting applications. The application will be deemed incomplete and the applicant will not be found qualified to bid.

(3) If an individual or entity submits multiple applications in a single auction, or if entities that are commonly controlled by the same individual or same set of individuals submit more than one application in a single auction, then at most only one of such applications may be deemed complete, and the other such application(s) will be deemed incomplete, and such applicants will not be found qualified to bid.

(4) An applicant will not be permitted to participate in competitive bidding if the applicant has not provided any bond or deposit of funds required pursuant to paragraph (e) of this section, as of the applicable deadline.

(5) The Commission will provide applicants a limited opportunity to cure defects (except for failure to sign the application and to make all required certifications) during a resubmission period established by public notice and to resubmit a corrected application. During the resubmission period for curing defects, an application may be amended or modified to cure defects identified by the Commission or to make minor amendments or modifications. After the resubmission period has ended, an application may be amended or modified to make minor changes or correct minor errors in the application. An applicant may not make major modifications to its application after the initial filing deadline. An applicant will not be permitted to participate in competitive bidding if Commission staff determines that the application requires major modifications to be made after that deadline. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, or any changes in the identity of the applicant, or any changes in the required certifications. Minor amendments include, but are not limited to, the correction of typographical errors and other minor defects not identified as major. Minor modifications may be subject to a deadline established by public notice. An application will be considered to be newly filed if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(6) An applicant that fails to cure the defects in their applications in a timely manner during the resubmission period as specified by public notice will have its application dismissed with no further opportunity for resubmission.

(7) An applicant that is found qualified to participate in competitive bidding shall be identified in a public notice.

(8) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

[76 FR 73851, Nov. 29, 2011, as amended at 81 FR 44448, July 7, 2016; 85 FR 75814, Nov. 25, 2020]

§ 1.21002 Prohibition of certain communications during the competitive bidding process.

(a) *Definitions.* For purposes of this section:

(1) The term ''applicant'' shall include all controlling interests in the entity submitting an application to participate in a given auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting the application, and all officers and directors of that entity. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium; and

(2) The term *bids* or *bidding strategies* shall include capital calls or requests for additional funds in support of bids or bidding strategies.

(b) *Certain communications prohibited.* After the deadline for submitting applications to participate, an applicant is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support.

(1) *Example 1.* Company A is an applicant in area 1. Company B and Company C each own 10 percent of Company A. Company D is an applicant in area 1, area 2, and area 3. Company C is an applicant in area 3. Without violating the Commission's Rules, Company B can enter into a consortium arrangement with Company D or acquire an ownership interest in Company D if Company B certifies either:

(i) That it has communicated with and will communicate neither with Company A or anyone else concerning Company A's bids or bidding strategy, nor with Company C or anyone else concerning Company C's bids or bidding strategy, or

(ii) That it has not communicated with and will not communicate with Company D or anyone else concerning Company D's bids or bidding strategy.

(2) [Reserved]

(c) *Internal controls required.* Any party submitting an application for a given auction that has an ownership or other interest disclosed with respect to more than one application for an auction must implement internal controls that preclude any individual acting on behalf of the applicant as defined in paragraph (a)(1) of this section from possessing information about the bids or bidding strategies as defined in paragraph (a)(2) of this section of more than one party submitting an application for the auction or communicating such information with respect to a party submitting an application for the auction to anyone possessing such information regarding another party submitting an application for the auction. Implementation of such internal controls will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.

(d) *Modification of application required.* An applicant must modify its application for an auction to reflect any changes in ownership or in membership of a consortium or a joint venture or agreements or understandings related to the support being sought.

(e) *Duty to report potentially prohibited communications.* An applicant that makes or receives communications that may be prohibited pursuant to paragraph (b) of this section shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.

(f) *Procedures for reporting potentially prohibited communications.* Any report required to be filed pursuant to this section shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no such public notice provides direction, the party making the report shall do so in writing to the Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available, including electronic transmission such as email.

[85 FR 75816, Nov. 25, 2020]

§ 1.21003 Competitive bidding process.

(a) *Public Notice of Competitive Bidding Procedures.* Detailed competitive bidding procedures shall be established by public notice prior to the commencement of competitive bidding any time competitive bidding is conducted pursuant to this subpart.

(b) *Competitive Bidding Procedures—Design Options.* The public notice detailing competitive bidding procedures may establish the design of the competitive bidding utilizing any of the following options, without limitation:

(1) *Procedures for Collecting Bids.* (i) Procedures for collecting bids in a single round or in multiple rounds.

(ii) Procedures for collecting bids on an item-by-item basis, or using various aggregation specifications.

(iii) Procedures for collecting bids that specify contingencies linking bids on the same item and/or for multiple items.

(iv) Procedures allowing for bids that specify a support level, indicate demand at a specified support level, or provide other information as specified by the Commission.

(v) Procedures to collect bids in one or more stage or stages, including for transitions between stages.

(2) *Procedures for Assigning Winning Bids*. (i) Procedures for scoring bids by factors in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors.

(ii) Procedures to incorporate public interest considerations into the process for assigning winning bids.

(3) *Procedures for Determining Payments*. (i) Procedures to determine the amount of any support for which winning bidders may become authorized, consistent with other auction design choices.

(ii) Procedures that provide for support amounts based on the amount as bid or on other pricing rules, either uniform or discriminatory.

(c) *Competitive Bidding Procedures—Mechanisms*. The public notice detailing competitive bidding procedures may establish any of the following mechanisms, without limitation:

(1) *Limits on Available Information*. Procedures establishing limits on the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process, as well as procedures for parties to report the receipt of non-public information during such periods.

(2) *Sequencing*. Procedures establishing one or more groups of eligible areas and if more than one, the sequence of groups for which bids will be accepted.

(3) *Reserve Price*. Procedures establishing reserve prices, either disclosed or undisclosed, above which bids would not win in the auction. The reserve prices may apply individually, in combination, or in the aggregate.

(4) *Timing and Method of Placing Bids*. Procedures establishing methods and times for submission of bids, whether remotely, by telephonic or electronic transmission, or in person.

(5) *Opening Bids and Bid Increments*. Procedures establishing maximum or minimum opening bids and, by announcement before or during the auction, maximum or minimum bid increments in dollar or percentage terms.

(6) *Withdrawals*. Procedures by which bidders may withdraw bids, if withdrawals are allowed.

(7) *Stopping Procedures*. Procedures regarding when bidding will stop for a round, a stage, or an entire auction, in order to terminate the auction within a reasonable time and in accordance with public interest considerations and the goals, statutory requirements, rules, and procedures for the auction, including any reserve price or prices.

(8) *Activity Rules*. Procedures for activity rules that require a minimum amount of bidding activity.

(9) *Auction Delay, Suspension, or Cancellation*. Procedures for announcing by public notice or by announcement during the reverse auction, delay, suspension, or cancellation of the auction in the event of a natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding, and procedures for resuming the competitive bidding starting from the beginning of the current or some previous round or cancelling the competitive bidding in its entirety.

(d) *Apportioning Package Bids*. If the public notice establishing detailed competitive bidding procedures adopts procedures for bidding for support on combinations or packages of geographic areas, the public notice also shall establish a methodology for apportioning such bids among the geographic areas within the combination or package for purposes of implementing any Commission rule or procedure that requires a discrete bid for support in relation to a specific geographic area.

(e) *Public Notice of Competitive Bidding Results.* After the conclusion of competitive bidding, a public notice shall identify the winning bidders that may apply for the offered universal service support and the amount(s) of support for which they may apply, and shall detail the application procedures.

[76 FR 73851, Nov. 29, 2011, as amended at 82 FR 15449, Mar. 28, 2017]

§ 1.21004 Winning bidder's obligation to apply for support

(a) *Timely and Sufficient Application.* A winning bidder has a binding obligation to apply for support by the applicable deadline. A winning bidder that fails to file an application by the applicable deadline or that for any reason is not subsequently authorized to receive support has defaulted on its bid.

(b) *Dismissal for failure to prosecute.* The Commission may dismiss a winning bidder's application with prejudice for failure of the winning bidder to prosecute, failure of the winning bidder to respond substantially within the time period specified in official correspondence or requests for additional information, or failure of the winning bidder to comply with requirements for becoming authorized to receive support. A winning bidder whose application is dismissed for failure to prosecute pursuant to this paragraph has defaulted on its bid(s).

(c) *Liability for default payment or forfeiture in the event of auction default.* A winning bidder that defaults on its bid(s) is liable for either a default payment or a forfeiture, which will be calculated by a method that will be established as provided in an order or public notice prior to competitive bidding. If the default payment is determined as a percentage of the defaulted bid amount, the default payment will not exceed twenty percent of the amount of the defaulted bid amount.

(d) *Additional liabilities.* In addition to being liable for a default payment or a forfeiture pursuant to paragraph (c) of this section, a winning bidder that defaults on its winning bid(s) shall be subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding pursuant to this subpart.

[76 FR 73851, Nov. 29, 2011, as amended at 85 FR 75816, Nov. 25, 2020]

Subpart BB—Disturbance of AM Broadcast Station Antenna Patterns

SOURCE: 78 FR 66295, Nov. 5, 2013, as amended at 78 FR 70499, Nov. 26, 2013, unless otherwise noted.

§ 1.30000 Purpose.

This rule part protects the operations of AM broadcast stations from nearby tower construction that may distort the AM antenna patterns. All parties holding or applying for Commission authorizations that propose to construct or make a significant modification to an antenna tower or support structure in the immediate vicinity of an AM antenna, or propose to install an antenna on an AM tower, are responsible for completing the analysis and notice process described in this subpart, and for taking any measures necessary to correct disturbances of the AM radiation pattern, if such disturbances occur as a result of the tower construction or modification or as a result of the installation of an antenna on an AM tower. In the event these processes are not completed before an antenna structure is constructed, any holder of or applicant for a Commission authorization is responsible for completing these processes before locating or proposing to locate an antenna on the structure, as described in this subpart.

§ 1.30001 Definitions.

For purposes of this subpart:

(a) *Wavelength at the AM frequency.* In this subpart, critical distances from an AM station are described in terms of the AM wavelength. The AM wavelength, expressed in meters, is computed as follows:

(300 meters)/(AM frequency in megahertz) = AM wavelength in meters.

For example, at the AM frequency of 1000 kHz, or 1 MHz, the wavelength is (300/1 MHz) = 300 meters.

(b) *Electrical degrees at the AM frequency.* This term describes the height

of a proposed tower as a function of the frequency of a nearby AM station. To compute tower height in electrical degrees, first determine the AM wavelength in meters as described in paragraph (a) of this section. Tower height in electrical degrees is computed as follows: (Tower height in meters)/(AM wavelength in meters) × 360 degrees = Tower height in electrical degrees. For example, if the AM frequency is 1000 kHz, then the wavelength is 300 meters, per paragraph (a) of this section. A nearby tower 75 meters tall is therefore [75/300] × 360 = 90 electrical degrees tall at the AM frequency.

(c) *Proponent.* The term proponent refers in this section to the party proposing tower construction or significant modification of an existing tower or proposing installation of an antenna on an AM tower.

(d) *Distance from the AM station.* The distance shall be calculated from the tower coordinates in the case of a nondirectional AM station, or from the array center coordinates given in CDBS or any successor database for a directional AM station.

§ 1.30002 Tower construction or modification near AM stations.

(a) Proponents of construction or significant modification of a tower which is within one wavelength of a nondirectional AM station, and is taller than 60 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance of the commencement of construction. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would distort the radiation pattern by more than 2 dB, the proponent shall be responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the nondirectional antenna.

(b) Proponents of construction or significant modification of a tower which is within the lesser of 10 wavelengths or 3 kilometers of a directional AM station, and is taller than 36 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance of the commencement of construction. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would result in radiation in excess of the AM station's licensed standard pattern or augmented standard pattern values, the proponent shall be responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the directional antenna.

(c) Proponents of construction or significant modification of a tower within the distances defined in paragraphs (a) and (b) of this section of an AM station shall examine the potential effects thereof using a moment method analysis. The moment method analysis shall consist of a model of the AM antenna together with the potential reradiating tower in a lossless environment. The model shall employ the methodology specified in § 73.151(c) of this chapter, except that the AM antenna elements may be modeled as a series of thin wires driven to produce the required radiation pattern, without any requirement for measurement of tower impedances.

(d) A significant modification of a tower in the immediate vicinity of an AM station is defined as follows:

(1) Any change that would alter the tower's physical height by 5 electrical degrees or more at the AM frequency; or

(2) The addition or replacement of one or more antennas or transmission lines on a tower that has been detuned or base-insulated.

(e) The addition or modification of an antenna or antenna-supporting structure on a building shall be considered a construction or modification subject to the analysis and notice requirements of this subpart if and only if the height of the antenna-supporting structure alone exceeds the thresholds in paragraphs (a) and (b) of this section.

(f) With respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study

described in paragraph (c) of this section, demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring-point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

(g) Tower construction or modification that falls outside the criteria described in the preceding paragraphs is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction or modification notwithstanding the criteria set forth above. In such cases, an AM station may submit a showing that its operation has been affected by tower construction or modification. Such a showing shall consist of either a moment method analysis as described in paragraph (c) of this section, or of field strength measurements. The showing shall be provided to:

(1) The tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current tower owner; and

(2) To the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent or tower owner, if the tower proponent or tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna. An applicant for a Commission authorization may not propose, and a party holding a Commission authorization may not locate, an antenna on any tower or support structure that has been shown to affect an AM station's operation pursuant to this subparagraph, or for which a disputed showing of effect on an AM station's operation is pending, unless the applicant, party, or tower owner notifies the AM station and takes appropriate action to correct the disturbance to the AM pattern.

(h) An AM station may submit a showing that its operation has been affected by tower construction or modification that was commenced or completed prior to or on the effective date of the rules adopted in this Part pursuant to MM Docket No. 93–177. Such a showing shall consist of either a moment method analysis as described in paragraph (c) of this section, or of field strength measurements. The showing shall be provided to the current tower owner and the Commission within one year of the effective date of the rules adopted in this Part pursuant to MM Docket No. 93–177. If necessary, the Commission shall direct the tower owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

(i) An applicant for a Commission authorization may not propose, and a party holding a Commission authorization may not locate, an antenna on any tower or support structure, whether constructed before or after December 5, 2013, that meets the criteria in paragraphs (a) and (b) of this section, unless the analysis and notice process described in this subpart, and any necessary measures to correct disturbances of the AM radiation pattern, have been completed by the tower owner, the party proposing to locate the antenna, or any other party, either prior to construction or at any other time prior to the proposal or antenna location.

[78 FR 66295, Nov. 5, 2013]

§ 1.30003 Installations on an AM antenna.

(a) *Installations on a nondirectional AM tower*. When antennas are installed on a nondirectional AM tower the AM station shall determine the operating power by the indirect method (see § 73.51 of this chapter). Upon completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes by more than 2 percent (see § 73.45(c)(1) of this chapter), an application on FCC Form

302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement.

(b) *Installations on a directional AM array*. Before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51 of this chapter) and request special temporary authority pursuant to § 73.1635 of this chapter to operate with parameters at variance.

(1) For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance as defined by § 73.154 of this chapter shall be conducted by the tower proponent both before and after construction to establish that the AM array will not be and has not been adversely affected. If the operating parameters of the AM array change following the installation, the results of the partial proof of performance shall be filed by the AM station with the Commission on Form 302–AM.

(2) For AM stations licensed via a moment method proof (see § 73.151(c) of this chapter), a base impedance measurement on the tower being modified shall be made by the tower proponent as described in § 73.151(c)(1). The result of the new tower impedance measurement shall be retained in the station's records. If the new measured base resistance and reactance values of the affected tower differ by more than ±2 ohms and ±4 percent from the corresponding modeled resistance and reactance values contained in the last moment method proof, then the station shall file Form 302–AM. The Form 302–AM shall be accompanied by the new impedance measurements for the modified tower and a new moment method model for each pattern in which the tower is a radiating element. Base impedance measurements for other towers in the array, sampling system measurements, and reference field strength measurements need not be repeated. The procedures described in this paragraph may be used as long as the affected tower continues to meet the requirements for moment method proofing after the modification.

(c) *Form 302–AM Filing*. When the AM station is required to file Form 302–AM following an installation as set forth in paragraphs (a) and (b) of this section, the Form 302–AM shall be filed before or simultaneously with any license application associated with the installation. If no license application is filed as a result of the installation, the Form 302–AM shall be filed within 30 days after the completion of the installation.

[78 FR 66295, Nov. 5, 2013]

§ 1.30004 Notice of tower construction or modification near AM stations.

(a) Proponents of proposed tower construction or significant modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002 and 1.30003 shall provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notice shall be provided to any AM station that is licensed or operating under Program Test Authority using the official licensee information and address listed in CDBS or any successor database. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification. At a minimum, the notification should include the following:

(1) Proponent's name and address. Coordinates of the tower to be constructed or modified.

(2) Physical description of the planned structure.

(3) Results of the analysis showing the predicted effect on the AM pattern, if performed.

(b) Response to a notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to a notification indicating a potential disturbance of the AM radiation pattern must specify the

technical details and must be provided to the proponent within 30 days. If no response to notification is received within 30 days, the proponent may proceed with the proposed tower construction or modification.

(c) The 30-day response period is calculated from the date of receipt of the notification by the AM station. If notification is by mail, this date may be ascertained by:

(1) The return receipt on certified mail;

(2) The enclosure of a card to be dated and returned by the recipient; or

(3) A conservative estimate of the time required for the mail to reach its destination, in which case the estimated date when the 30-day period would expire shall be stated in the notification.

(d) An expedited notification period (less than 30 days) may be requested when deemed necessary by the proponent. The notification shall be identified as ''expedited'' and the requested response date shall be clearly indicated. The proponent may proceed with the proposed tower construction or modification prior to the expiration of the 30-day notification period only upon receipt of written concurrence from the affected AM station (or oral concurrence, with written confirmation to follow).

(e) To address immediate and urgent communications needs in the event of an emergency situation involving essential public services, public health, or public welfare, a tower proponent may erect a temporary new tower or make a temporary significant modification to an existing tower without prior notice to potentially affected nearby AM stations, provided that the tower proponent shall provide written notice to such AM stations within five days of the construction or modification of the tower and shall cooperate with such AM stations to promptly remedy any pattern distortions that arise as a consequence of such construction.

[78 FR 66295, Nov. 5, 2013]

Subpart CC—Review of Applications, Petitions, Other Filings, and Existing Authorizations or Licenses with Reportable Foreign Ownership By Executive Branch Agencies for National Security, Law Enforcement, Foreign Policy, and Trade Policy Concerns

SOURCE: 85 FR 76383, Nov. 27, 2020, unless otherwise noted.

§ 1.40001 Executive branch review of applications, petitions, other filings, and existing authorizations or licenses with reportable foreign ownership.

(a) The Commission, in its discretion, may refer applications, petitions, and other filings to the executive branch for review for national security, law enforcement, foreign policy, and/or trade policy concerns.

(1) The Commission will generally refer to the executive branch applications filed for an international section 214 authorization and submarine cable landing license as well as an application to assign, transfer control of, or modify those authorizations and licenses where the applicant has reportable foreign ownership and petitions for section 310(b) foreign ownership rulings for broadcast, common carrier wireless, and common carrier satellite earth station licenses pursuant to §§ 1.767, 63.18 and 63.24 of this chapter, and 1.5000 through 1.5004.

(2)–(3) [Reserved]

(b) The Commission will consider any recommendations from the executive branch on pending application(s) for an international section 214 authorization or cable landing license(s) or petition(s) for foreign ownership ruling(s) pursuant to §§ 1.5000 through 1.5004 or on existing authorizations or licenses that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the executive branch and will make an independent decision concerning the pending matter.

(c) In any such referral pursuant to paragraph (a) of this section or when

considering any recommendations pursuant to paragraph (b) of this section, the Commission may disclose to relevant executive branch agencies, subject to the provisions of 44 U.S.C. 3510, any information submitted by an applicant, petitioner, licensee, or authorization holder in confidence pursuant to § 0.457 or § 0.459 of this chapter. Notwithstanding the provisions of § 0.442 of this chapter, notice will be provided at the time of disclosure.

(d) As used in this subpart, ''reportable foreign ownership'' for applications filed pursuant to §§ 1.767 and 63.18 and 63.24 of this chapter means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h); and for petitions filed pursuant to §§ 1.5000 through 1.5004 ''reportable foreign ownership'' means foreign disclosable interest holders pursuant to § 1.5001(e) and (f).

EFFECTIVE DATE NOTE: At 85 FR 76385, Nov. 27, 2020, § 1.40001 was amended by adding paragraphs (a)(2) and (3). This action was delayed indefinitely. For the convenience of the user, the added text is set forth as follows:

§ 1.40001 Executive branch review of applications, petitions, other filings, and existing authorizations or licenses with reportable foreign ownership.

(a) * * *

(2) The Commission will generally exclude from referral to the executive branch certain applications set out in paragraph (a)(1) of this section when the applicant makes a specific showing in its application that it meets one or more of the following categories:

(i) Pro forma notifications and applications;

(ii) Applications filed pursuant to §§ 1.767 and 63.18 and 63.24 of this chapter if the applicant has reportable foreign ownership and petitions filed pursuant to §§ 1.5000 through 1.5004 where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities;

(iii) Applications filed pursuant to §§ 63.18 and 63.24 of this chapter where the applicant has an existing international section 214 authorization that is conditioned on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement, there are no new reportable foreign owners of the applicant since the effective date of the agreement, and the applicant agrees to continue to comply with the terms of that agreement; and

(iv) Applications filed pursuant to §§ 63.18 and 63.24 of this chapter where the applicant was reviewed by the executive branch within 18 months of the filing of the application and the executive branch had not previously requested that the Commission condition the applicant's international section 214 authorization on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement and there are no new reportable foreign owners of the applicant since that review.

(3) In circumstances where the Commission, in its discretion, refers to the executive branch an application, petition, or other filing not identified in this paragraph (a)(3) or determines to refer an application or petition identified in paragraph (a)(2) of this section, the Commission staff will instruct the applicant, petitioner, or filer to follow the requirements for a referred application or petition set out in this subpart, including submitting responses to the standard questions to the Committee and making the appropriate certifications.

* * * * *

§ 1.40002 Referral of applications, petitions, and other filings with reportable foreign ownership to the executive branch agencies for review.

(a) The Commission will refer any applications, petitions, or other filings for which it determines to seek executive branch review by placing the application, petition, or other filing on an accepted for filing public notice that will provide a comment period for the executive branch to seek deferral for review for national security, law enforcement, foreign policy, and/or trade policy concerns.

(b)(1) The executive branch agency(ies) must electronically file in all applicable Commission file numbers and dockets associated with the application(s), petition(s), or other filing(s) a request that the Commission defer action until the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) completes its review. In the request for deferral the executive branch agency must notify the Commission on or before the comment date and must state whether the executive branch:

(i) Sent tailored questions to the applicant(s), petitioner(s), and/or other filer(s);

(ii) Will send tailored questions to the applicant(s), petitioner(s), and/or other filer(s) by a specific date not to be later than thirty (30) days after the date on which the Commission referred the application to the executive branch in accordance with paragraph (a) of this section; or

(iii) Will not transmit tailored questions to the applicant(s), petitioner(s), and/or other filer(s).

(2) The executive branch agency(ies) must electronically file in all applicable Commission file numbers and dockets associated with the application(s), petition(s), or other filing(s) a request by the comment date if it needs additional time beyond the comment period set out in the accepted for filing public notice to determine whether it will seek deferral.

(c) If an executive branch agency(ies) does not notify the Commission that it seeks deferral of referred application(s), petition(s), and/or other filing(s) within the comment period established by an accepted for filing public notice, the Commission will deem that the executive branch does not have any national security, law enforcement, foreign policy, and/or trade policy concerns with the application(s), petition(s), and/or other filing(s) and may act on the application(s), petition(s), and/or other filing(s) as appropriate based on its determination of the public interest.

§ 1.40003 Categories of information to be provided to the executive branch agencies.

(a) Each applicant, petitioner, and/or other filer subject to a referral to the executive branch pursuant to § 1.40001:

(1) Must submit detailed and comprehensive information in the following categories:

(i) Corporate structure and shareholder information;

(ii) Relationships with foreign entities;

(iii) Financial condition and circumstances;

(iv) Compliance with applicable laws and regulations; and

(v) Business and operational information, including services to be provided and network infrastructure, in responses to standard questions, prior to or at the same time the applicant files its application(s), petition(s), and/or other filing(s) with the Commission directly to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee).

(2) Must submit a complete and unredacted copy of its FCC application(s), petition(s), and/or other filing(s) to the Committee, including the file number(s) and docket number(s), within three (3) business days of filing it with the Commission.

(b) The standard questions and instructions for submitting the responses and the FCC application(s), petition(s), and/or other filing(s) are available on the FCC website.

(c) The responses to the standard questions shall be submitted directly to the Committee.

[85 FR 76385, Nov. 27, 2020]

EFFECTIVE DATE NOTE: At 85 FR 76385, Nov. 27, 2020, § 1.40003 was added. This action was delayed indefinitely.

§ 1.40004 Time frames for executive branch review of applications, petitions, and/or other filings with reportable foreign ownership.

(a) *Tailored questions.* For application(s), petition(s), and/or other filing(s) referred to the executive branch, in accordance with § 1.40002(b)(1), the executive branch agency(ies) shall notify the Commission:

(1) That the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) has sent tailored questions to the applicant(s), petitioner(s), and/or other filer(s); and

(2) When the Chair of the Committee determines that the applicant's, petitioner's, and/or other filer's responses to any questions and information requests from the Committee are complete.

(b) *Initial review—120-day time frame.* The executive branch shall notify the Commission by filing in the public record, in all applicable Commission file numbers and dockets for the application(s), petition(s), or other filing(s),

no later than 120 days, plus any additional days as needed for escalated review and for NTIA to notify the Commission of the Committee's final recommendation in accordance with Executive Order 13913 (or as it may be amended), from the date that the Chair of the Committee determines that the applicant's, petitioner's, or other filer's responses to the tailored questions are complete, provided that the Committee sent tailored questions within thirty (30) days of the date of the Commission's referral in accordance with §1.40002(a), and subject to paragraphs (e) and (f) of this section, whether it:

(1) Has no recommendation and no objection to the FCC granting the application;

(2) Recommends that the FCC only grant the application contingent on the applicant's compliance with mitigation measures; or

(3) Needs additional time to review the application(s), petition(s), or other filing(s).

(c) *Secondary assessment—additional 90-day time frame.* When the executive branch notifies the Commission that it needs an additional 90-day period beyond the initial 120-day period for review of the application, petition, or other filing under paragraph (a) of this section, in accordance with the secondary assessment provisions of Executive Order 13913 (or as it may be amended), the executive branch must:

(1) Explain in a filing on the record why it was unable to complete its review within the initial 120-day review period and state when the secondary assessment began; and

(2) Notify the Commission by filing in the public record, in all applicable Commission file numbers and dockets for the application(s), petition(s), or other filing(s) no later than 210 days, plus any additional days as needed for escalated review and for NTIA to notify the Commission of the Committee's final recommendation in accordance with Executive Order 13913 (or as it may be amended), from the date that the Chair of the Committee determines that the applicant's, petitioner's, or other filer's responses to the tailored questions are complete, provided that the Committee sent tailored questions within thirty (30) days of the date of the Commission's referral in accordance with §1.40002(a), and subject to paragraphs (e) and (f) of this section, whether it:

(i) Has no recommendation and no objection to the FCC granting the application;

(ii) Recommends that the FCC only grant the application contingent on the applicant's compliance with mitigation measures; or

(iii) Recommends that the FCC deny the application due to the risk to the national security or law enforcement interests of the United States.

(d) *Executive branch notifications to the Commission.* (1) The executive branch shall file its notifications as to the status of its review in the public record established in all applicable Commission file numbers and dockets for the application, petition, or other filing. Status notifications include notifications of the date on which the Committee sends the tailored questions to an applicant, petitioner, or other filer and the date on which the Chair accepts an applicant's, petitioner's, or other filer's responses to the tailored questions as complete. Status notifications also include extensions of the 120-day review period and 90-day extension period (to include the start and end day of the extension) and updates every thirty (30) days during the 90-day extension period. If the executive branch recommends dismissal of the application, petition, or other filing without prejudice because the applicant, petitioner, or other filer has failed to respond to requests for information, the executive branch shall file that recommendation in the public record established in all applicable Commission file numbers and dockets.

(2) In circumstances where the notification of the executive branch contains non-public information, the executive branch shall file a public version of the notification in the public record established in all applicable Commission file numbers and dockets for the application, petition, or other filing and shall file the non-public information with the Commission pursuant to §0.457 of this chapter.

(e) *Alternative start dates for the executive branch's initial 120-day review.* (1) In the event that the executive branch

has not transmitted the tailored questions to an applicant within thirty (30) days of the Commission's referral of an application, petition, or other filing, the executive branch may request additional time by filing a request in the public record established in all applicable Commission file numbers and dockets associated with the application, petition, or other filing. The Commission, in its discretion, may allow an extension or start the executive branch's 120-day review clock immediately. If the Commission allows an extension and the executive branch does transmit the tailored questions to the applicant, petitioner, or other filer within the authorized extension period, the initial 120-day review period will begin on the date that executive branch determines the applicant's, petitioner's, or other filer's responses to be complete. If the executive branch does not transmit the tailored questions to the applicant, petitioner, or other filer within the authorized extension period, the Commission, in its discretion, may start the initial 120-day review period.

(2) In the event that the executive branch's notification under § 1.40002(b) indicates that no tailored questions are necessary, the 120-day initial review period will begin on the date of that notification.

(f) *Extension of executive branch review periods.* In accordance with Executive Order 13913 (or as it may be amended), the executive branch may in its discretion extend the initial 120-day review period and 90-day secondary assessment period. The executive branch shall file notifications of all extensions in the public record.

Subpart DD—Secure and Trusted Communications Networks

AUTHORITY: 47 U.S.C. chs. 5, 15.

SOURCE: 86 FR 2941, Jan. 13, 2021, unless otherwise noted.

§ 1.50000 Purpose.

The purpose of this subpart is to implement the Secure and Trusted Communications Networks Act of 2019, Public Law 116–124, 133 Stat. 158.

§ 1.50001 Definitions.

For purposes of this subpart:

(a) *Advanced communications service.* The term ''advanced communications service'' means high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology with connection speeds of at least 200 kbps in either direction.

(b) *Appropriate national security agency.* The term ''appropriate national security agency'' means:

(1) The Department of Homeland Security;

(2) The Department of Defense;

(3) The Office of the Director of National Intelligence;

(4) The National Security Agency; and

(5) The Federal Bureau of Investigation.

(c) *Communications equipment or service.* The term ''communications equipment or service'' means any equipment or service used in fixed and mobile networks that provides advanced communication service, provided the equipment or service includes or uses electronic components.

(d) *Covered communications equipment or service.* The term ''covered communications equipment or service'' means any communications equipment or service that is included on the Covered List developed pursuant to § 1.50002.

(e) *Determinations.* The term ''determination'' means any determination from sources identified in § 1.50002(b)(1)(i)–(iv) that communications equipment or service pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.

(f) *Covered List.* The Covered List is a regularly updated list of covered communications equipment and services.

(g) *Reimbursement Program.* The Reimbursement Program means the program established by section 4 of the Secure and Trusted Communications Networks Act of 2019, Public Law 116–124, 133 Stat. 158, codified at 47 U.S.C. 1603, as implemented by the Commission in § 1.50004.

(h) *Reimbursement Program recipient (or recipient)*. The term ''Reimbursement Program recipient'' or ''recipient'' means an eligible advanced communications service provider that has requested via application and been approved for funding in the Reimbursement Program, regardless of whether the provider has received reimbursement funds.

(i) *Replacement List*. The Replacement List is a list of categories of suggested replacements for covered communications equipment or service.

§ 1.50002 Covered List.

(a) *Publication of the Covered List*. The Public Safety and Homeland Security Bureau shall publish the Covered List on the Commission's website and shall maintain and update the Covered List in accordance with § 1.50003.

(b) *Inclusion on the Covered List*. The Public Safety and Homeland Security Bureau shall place on the Covered List any communications equipment or service that:

(1) Is produced or provided by any entity if, based exclusively on the following determinations, such equipment or service poses an unacceptable risk to the national security of the United States or the security and safety of United States persons:

(i) A specific determination made by any executive branch interagency body with appropriate national security expertise, including the Federal Acquisition Security Council established under section 1222(a) of title 41, United States Code;

(ii) A specific determination made by the Department of Commerce pursuant to Executive Order No. 13873 (3 CFR, 2019 Comp., p 317); relating to securing the information and communications technology and services supply chain);

(iii) Equipment or service being covered telecommunications equipment or services, as defined in section 889(f)(3) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232; 132 Stat. 1918); or

(iv) A specific determination made by an appropriate national security agency;

(2) And is capable of:

(i) Routing or redirecting user data traffic or permitting visibility into any user data or packets that such equipment or service transmits or otherwise handles;

(ii) Causing the networks of a provider of advanced communications services to be disrupted remotely; or

(iii) Otherwise posing an unacceptable risk to the national security of the United States or the security and safety of United States persons.

§ 1.50003 Updates to the Covered List.

(a) The Public Safety and Homeland Security Bureau shall monitor the status of determinations in order to update the Covered List.

(b) If a determination regarding covered communications equipment or service on the Covered List is reversed or modified, the Public Safety and Homeland Security Bureau shall remove from or modify the entry of such equipment or service on the Covered List, except the Public Safety and Homeland Security Bureau may not remove such equipment or service from the Covered List if any other of the sources identified in § 1.50002(b)(1)(i) through (iv) maintains a determination supporting inclusion on the Covered List of such equipment or service.

(c) After each 12-month period during which the Covered List is not updated, the Public Safety and Homeland Security Bureau will issue a Public Notice indicating that no updates were necessary during such period.

§ 1.50004 Secure and Trusted Communications Networks Reimbursement Program.

(a) *Eligibility*. Providers of advanced communications service with ten million or fewer customers are eligible to participate in the Reimbursement Program to reimburse such providers solely for costs reasonably incurred for the permanent replacement, removal, and disposal of covered communications equipment or services:

(1) As defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19–121; WC Docket No. 18–89; adopted November 22, 2019 (in this section referred to as the 'Report and Order'); or

(2) As determined to be covered by both the process of the Report and Order and the Designation Orders of the Commission on June 30, 2020 (DA 20–690; PS Docket No. 19–351; adopted June 30, 2020) (DA 20–691; PS Docket No. 19–352; adopted June 30, 2020) (in this section collectively referred to as the 'Designation Orders');

(3) The provider certifies:

(i) As of the date of the submission of the application, the provider has developed:

(A) A plan for the permanent removal and replacement of any covered communications equipment or service that is in the communications network of the provider as of such date; and the disposal of the equipment or services removed; and

(B) A specific timeline for the permanent removal, replacement, and disposal of the covered communications equipment or service, which timeline shall be submitted to the Commission as part of the application per paragraph (c)(1)(iv) of this section; and

(ii) beginning on the date of the approval of the application, the provider:

(A) Will not purchase, rent, lease, or otherwise obtain covered communications equipment or service, using reimbursement funds or any other funds (including funds derived from private sources); and

(B) In developing and tailoring the risk management practices of the applicant, will consult and consider the standards, guidelines, and best practices set forth in the cybersecurity framework developed by the National Institute of Standards and Technology.

(b) *Filing window*. The Wireline Competition Bureau shall announce the opening of an initial application filing window for eligible providers seeking to participate in the Reimbursement Program for the reimbursement of costs reasonably incurred for the removal, replacement, and disposal of covered communications equipment and services. The Wireline Competition Bureau may implement additional filing windows as necessary and shall provide notice before opening any additional filing window, and include in that notice the amount of funding available. The Wireline Competition Bureau shall treat all eligible providers filing an application within any filing window as if their applications were simultaneously received. Funding requests submitted outside of a filing window will not be accepted.

(c) *Application requests for funding*. During a filing window, eligible providers may request a funding allocation from the Reimbursement Program for the reimbursement of costs reasonably incurred for the permanent removal, replacement, and disposal of covered communications equipment or service.

(1) Requests for funding allocations must include:

(i) An estimate of costs reasonably incurred for the permanent removal, replacement, and disposal of covered communications equipment or service from the eligible provider's network. Eligible providers may rely upon the predetermined estimated costs identified in the Catalog of Expenses Eligible for Reimbursement made available by the Wireline Competition Bureau. Eligible providers that submit their own cost estimates must submit supporting documentation and certify that the estimate is made in good faith.

(ii) Detailed information on the covered communications equipment or service being removed, replaced and disposed of;

(iii) The certifications set forth in paragraph (a)(3) of this section;

(iv) A specific timeline for the permanent removal, replacement, and disposal of the covered communications equipment or services; and

(v) The eligible provider certifies in good faith:

(A) It will reasonably incur the estimated costs claimed as eligible for reimbursement;

(B) It will use all money received from the Reimbursement Program only for expenses eligible for reimbursement;

(C) It will comply with all policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Program;

(D) It will maintain detailed records, including receipts, of all costs eligible for reimbursement actually incurred for a period of 10 years; and

(E) It will file all required documentation for its expenses.

(d) *Application review process.* The Wireline Competition Bureau will review applications to determine whether the application is complete, whether the applicant is eligible for the Reimbursement Program, and to assess the reasonableness of the cost estimates provided by the applicant. The Wireline Competition Bureau shall approve or deny applications to receive a funding allocation from the Reimbursement Program within 90 days after the close of the applicable filing window. The Wireline Competition Bureau may extend the deadline for granting or denying applications for up to an additional 45 days if it determines that an excessive number of applications have been filed during the window and additional time is needed to review the applications.

(1) If the Wireline Competition Bureau determines that an application is materially deficient (including by lacking an adequate cost estimate or adequate supporting materials), the Wireline Competition Bureau shall provide the applicant a 15-day period to cure the defect before denying the application. If the cure period would extend beyond the deadline under this paragraph (d) for approving or denying the application, such deadline shall be extended through the end of the cure period.

(2) Denial of an application shall not preclude the applicant from submitting a new application for reimbursement in a subsequent filing window.

(e) *Funding allocation.* Once an application is approved, the Wireline Competition Bureau will allocate funding on the applicant's behalf to the United States Treasury for draw down by the Reimbursement Program recipient as expenses are incurred pursuant to the funding disbursement process provided for in paragraph (g) of this section.

(f) *Prioritization of Support.* The Wireline Competition Bureau shall issue funding allocations in accordance with this section after the close of a filing window. After a filing window closes, the Wireline Competition Bureau shall calculate the total demand for Reimbursement Program support submitted by all eligible providers during the filing window period. If the total demand received during the filing window exceeds the total funds available, then the Wireline Competition Bureau shall allocate the available funds consistent with the following priority schedule:

TABLE 1 TO PARAGRAPH (f)

Prioritization schedule
Priority 1
Advanced communication service providers with 2 million or fewer customers.
Priority 2
Advanced communications service providers that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service, as defined in part 27, subpart M of title 47, Code of Federal Regulations, or any successor regulation and health care providers and libraries providing advanced communications service.
Priority 3
Any remaining approved applicants determined to be eligible for reimbursement under the Program.

(1) *Application of prioritization schedule.* The Wireline Competition Bureau shall issue full funding allocations for all eligible providers in the Priority 1 prioritization category before issuing funding allocations in any subsequent prioritization categories. The Wireline Competition Bureau shall continue to review all funding requests and issue funding allocations by prioritization category until there are no available funds remaining. If there is insufficient funding to fully fund all requests in a particular prioritization category, then the Wireline Competition Bureau will pro-rate the available funding among all eligible providers in that prioritization category. Requests for funds in subsequent prioritization categories will be denied for lack of available funding.

(2) *Pro-rata reductions.* When pro-rata reductions are required per paragraph (f)(1) of this section, the Wireline Competition Bureau shall:

(i) Divide the total remaining funds available by the demand within the specific prioritization category to produce a pro-rata factor;

(ii) Multiply the pro-rata factor by the total dollar amount requested by each recipient in the prioritization category; and

(iii) Allocate funds to each recipient consistent with this calculation.

(g) *Funding disbursements.* Following the approval and issuance by the Wireline Competition Bureau of a funding allocation, a Reimbursement Program recipient may file a reimbursement claim request for the draw down disbursement of funds from the recipient's funding allocation. The recipient must show in the reimbursement claim actual expenses reasonably incurred for the removal, replacement, and disposal of covered communications equipment or service. The Wireline Competition Bureau will review and grant or deny reimbursement claims for actual costs reasonably incurred.

(1) *Initial reimbursement claim.* Within one year of the approval of its Reimbursement Program application, a recipient must file at least one reimbursement claim. Failure to file a reimbursement claim within the one-year period will result in the reclamation of all allocated funding from the Reimbursement Program recipient and revert to the Reimbursement Program fund for potential allocation to other Reimbursement Program participants.

(2) *Reimbursement claim deadline.* All reimbursement claims must be filed by the Reimbursement Program recipient within 120 days of expiration of the removal, replacement and disposal term. Following the expiration of the reimbursement claim deadline, any remaining and unclaimed funding allocated to the Reimbursement Program recipient will automatically be reclaimed and revert to the Reimbursement Program fund for potential allocation to other Reimbursement Program participants.

(3) *Extension of reimbursement claim deadline.* A Reimbursement Program recipient may request a single extension of the reimbursement claim deadline by no later than the deadline discussed in paragraph (g)(2). The Wireline Competition Bureau shall grant any timely filed extension request of the reimbursement claim filing deadline for no more than 120 days.

(h) *Removal, replacement, and disposal term.* Reimbursement Program recipients must complete the permanent removal, replacement, and disposal of covered communications equipment or service within one year of receiving the initial draw down disbursement from their funding allocation.

(1) *General extension.* The Commission may extend by a period of six months the removal, replacement, and disposal term to all Reimbursement Program recipients if the Commission:

(i) Finds that the supply of replacement communications equipment or services needed by the recipients to achieve the purposes of the Reimbursement Program is inadequate to meet the needs of the recipients; and

(ii) Provides notice and detailed justification for granting the extension to:

(A) The Committee on Energy and Commerce of the House of Representatives; and

(B) The Committee on Commerce, Science, and Transportation of the Senate.

(2) *Individual extensions.* Prior to the expiration of the removal, replacement and disposal term, a Reimbursement Program recipient may petition the Wireline Competition Bureau for an extension of the term. The Wireline Competition Bureau may grant an extension for up to six months after finding, that due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term. The Wireline Competition Bureau may grant more than one extension request to a recipient if circumstances warrant.

(i) *Limitations on funding use.* A Reimbursement Program recipient may not:

(1) Use reimbursement funds to remove, replace or dispose of any covered communications equipment or service purchased, rented, leased, or otherwise obtained:

(i) on or after publication of the Report and Order; or

(ii) in the case of any covered communications equipment that only became covered pursuant to the Designation Orders, June 30, 2020; or

(2) Purchase, rent, lease, or otherwise obtain any covered communications equipment or service, using reimbursement funds or any other funds (including funds derived from private sources).

(j) *Disposal requirements.* Reimbursement Program recipients must dispose of the covered communications equipment or service in a manner to prevent the equipment or service from being used in the networks of other providers of advanced communications service. The disposal must result in the destruction of the covered communications equipment or service, making the covered communications equipment or service inoperable permanently. Reimbursement Program recipients must retain documentation demonstrating compliance with this requirement.

(k) *Status updates.* Reimbursement Program recipients must file a status update with the Commission 90 days after the date on which the Wireline Competition Bureau approves the recipient's application for reimbursement and every 90 days thereafter, until the recipient has filed the final certification.

(1) Status updates must include:

(i) Efforts undertaken, and challenges encountered, in permanently removing, replacing, and disposing of the covered communications equipment or service;

(ii) The availability of replacement equipment in the marketplace;

(iii) Whether the recipient has fully complied with (or is in the process of complying with) all requirements of the Reimbursement Program;

(iv) Whether the recipient has fully complied with (or is in the process of complying with) the commitments made in the recipient's application;

(v) Whether the recipient has permanently removed from its communications network, replaced, and disposed of (or is in the process of permanently removing, replacing, and disposing of) all covered communications equipment or services that were in the recipient's network as of the date of the submission of the recipient's application; and

(vi) Whether the recipient has fully complied with (or is in the process of complying with) the timeline submitted by the recipient as required by paragraph (c)(1)(iv) of this section.

(2) The Wireline Competition Bureau will publicly post on the Commission's website the status update filings no earlier than 30 days after submission.

(3) Within 180 days of completing the funding allocation stage provided for in paragraph (e), the Wireline Competition Bureau shall prepare a report for Congress providing an update on the Commission's implementation efforts and the work by recipients to permanently remove, replace, and dispose of covered communications equipment and service from their networks.

(l) *Spending reports.* Within 10 days after the end of January and July, Reimbursement Program recipients must file reports with the Commission regarding how reimbursement funds have been spent, including detailed accounting of the covered communications equipment or service permanently removed and disposed of, and the replacement equipment or service purchased, rented, leased, or otherwise obtained, using reimbursement funds.

(1) This requirement applies starting with the recipient's initial receipt of disbursement funds per paragraph (g) of this section and terminates once the recipient has filed a final spending report. certification.

(2) Following the filing of its final certification per paragraph (m) of this section, certifying that the recipient has completed the removal, replacement, and disposal process, the recipient must file a final spending report showing the expenditure of all funds received as compared to estimated costs identified in its application for funding.

(3) The Wireline Competition Bureau will make versions of the spending reports available on the Commission's website subject to confidentiality concerns consistent with the Commission's rules.

(m) *Final certification.* Within 10 days following the expiration of the removal, replacement, and disposal term, Reimbursement Program recipient shall file a final certification with the Commission.

(1) The final certification shall indicate whether the recipient has fully complied with (or is in the process of complying with) all terms and conditions of the Reimbursement Program, the commitments made in the application of the recipient for the reimbursement, and the timeline submitted by the recipient as required by paragraph (c) of this section. In addition, the final certification shall indicate whether the recipient has permanently removed from its communications network, replaced, and disposed of (or is in the process of permanently removing, replacing, and disposing of) all covered communications equipment or services that were in the network of the recipient as of the date of the submission of the application by the recipient for the reimbursement.

(2) If a recipient submits a certification under this paragraph stating the recipient has not fully complied with the obligations detailed in paragraph (m)(1) of this section, then the recipient must file an updated certification when the recipient has fully complied.

(n) *Documentation retention requirement*. Each Reimbursement Program recipient is required to retain all relevant documents, including invoices and receipts, pertaining to all costs eligible for reimbursement actually incurred for the removal, replacement, and disposal of covered communications equipment or services for a period ending not less than 10 years after the date on which it receives final disbursement from the Reimbursement Program.

(o) *Audits, reviews, and field investigations*. Recipients shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the Reimbursement Program. Recipients must provide consent to allow vendors or contractors used by the recipient in connection with the Reimbursement Program to release confidential information to the auditor, reviewer, or other representative. Recipients shall permit any representative (including any auditor) appointed by the Commission to enter their premises to conduct compliance inspections.

(p) *Delegation of authority*. The Commission delegates authority to the Wireline Competition Bureau, to adopt the necessary policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Program to protect against waste, fraud, and abuse and in the event of bankruptcy, to establish a Catalog of Expenses Eligible for Reimbursement and predetermined cost estimates, review the estimated cost forms, issue funding allocations for costs reasonably incurred, set filing deadlines and review information and documentation regarding progress reports, allocations, and final accountings.

(q) *Provider of Advanced Communications Services*. For purposes of the Secure and Trusted Communications Networks Reimbursement Program, the term ''provider of advanced communications services'' is defined as:

(1) A person who provides advanced communications service to United States customers; and includes:

(A) Accredited public or private noncommercial educational institutions, providing their own facilities-based educational broadband service, as defined in 47 CFR part 27, subpart M, or any successor regulation; and

(B) Health care providers and libraries providing advanced communications service.

(2) [Reserved]

[86 FR 2941, 2944, Jan. 13, 2021, as amended at 86 FR 55515, Oct. 6, 2021; 86 FR 47021, Aug. 23, 2021; 87 FR 59329, Sept. 30, 2022]

§ 1.50005 Enforcement.

(a) *Violations*. In addition to the penalties provided under the Communications Act of 1934, as amended, and section 1.80 of this chapter, if a Reimbursement Program recipient violates the Secure and Trusted Communications Networks Act of 2019, Public Law 116–124, 133 Stat. 158, the Commission's rules implementing the statute, or the commitments made by the recipient in the application for reimbursement, the recipient:

(1) Shall repay to the Commission all reimbursement funds provided to the recipient under the Reimbursement Program;

(2) Shall be barred from further participation in the Reimbursement Program;

(3) Shall be referred to all appropriate law enforcement agencies or officials for further action under applicable criminal and civil law; and

(4) May be barred by the Commission from participation in other programs of the Commission, including the Federal universal service support programs established under section 254 of the Communications Act of 1934, as amended.

(b) *Notice and opportunity to cure*. The penalties described in paragraph (a) of this section shall not apply to a recipient unless:

(1) The Commission, the Wireline Competition Bureau, or the Enforcement Bureau provides the recipient with notice of the violation; and

(2) The recipient fails to cure the violation within 180 days after such notice.

(c) *Recovery of funds*. The Commission will immediately take action to recover all reimbursement funds awarded to a recipient under the Program in any case in which such recipient is required to repay reimbursement funds under paragraph (a) of this section.

§ 1.50006 Replacement List.

(a) *Development of List*. The Commission shall develop a list of categories of suggested replacements of physical and virtual communications equipment, application and management software, and services for the covered communications equipment or services listed on the Covered List pursuant to §§ 1.50002 and 1.50003 of this subpart.

(1) In compiling the Replacement List, the Commission may review efforts from, or overseen by, other Federal partners to inform the Replacement List.

(2) The Replacement List shall include categories of physical and virtual communications equipment, application and management software, and services that allows carriers the flexibility to select the equipment or services that fit their needs from categories of equipment and services.

(3) The Wireline Competition Bureau shall publish the Replacement List on the Commission's website.

(b) *Maintenance of the List*. The Wireline Competition Bureau shall issue a Public Notice announcing any updates to the Replacement List. If there are no updates to the Replacement List in a calendar year, the Wireline Competition Bureau shall issue a Public Notice announcing that no updates that have been made to the Replacement List.

(c) *Neutrality*. The Replacement List must be technology neutral and may not advantage the use of reimbursement funds for capital expenditures over operational expenditures.

§ 1.50007 Reports on covered communications equipment or services.

(a) *Contents of Report*. Each provider of advanced communications service must submit an annual report to the Commission that:

(1) Identifies any covered communications equipment or service that was purchased, rented, leased or otherwise obtained on or after:

(i) August 14, 2018, in the case of any covered communications equipment or service on the initial list published pursuant to § 1.50002; or

(ii) Within 60 days after the date on which the Commission places such equipment or service on the list required by § 1.50003;

(2) Provides details on the covered communications equipment or services in its network subject to reporting pursuant to paragraph (a)(1) of this section, including the type, location, date purchased, rented, leased or otherwise obtained, and any removal and replacement plans;

(3) Provides a detailed justification as to why the facilities-based provider of broadband service purchased, rented, leased or otherwise obtained the covered communications equipment or service;

(4) Provides information about whether any such covered communications equipment or service has subsequently been removed and replaced pursuant to Commission's reimbursement program contained in § 1.50004 of this subpart;

(5) Provides information about whether such provider plans to continue to purchase, rent, lease, or otherwise obtain, or install or use, such covered communications equipment or service and, if so, why; and

(6) Includes a certification as to the accuracy of the information reported by an appropriate official of the filer, along with the title of the certifying official.

(b) *Reporting deadline*. Providers of advanced communications service shall file initial reports within 90 days after the Office of Economics and Analytics issues a public notice announcing the availability of the new reporting platform. Thereafter, filers must submit reports once per year on or before March 31st, reporting information as of December 31st of the previous year.

(c) *Reporting exception*. If a provider of advanced communications service certifies to the Commission that such provider does not have any covered communications equipment or service in the network of such provider, such provider is not required to submit a report under this section after making such certification, unless such provider later purchases, rents, leases or otherwise obtains any covered communications equipment or service.

(d) *Authority to update*. The Office of Economics and Analytics may, consistent with these rules, implement any technical improvements, changes to the format and type of data submitted, or other clarifications to the report and its instructions.

[86 FR 2946, Jan. 13, 2021, as amended at 86 FR 55515, Oct. 6, 2021]

Subpart EE—Enhanced Competition Incentive Program

SOURCE: 87 FR 57417, Sept. 20, 2022, unless otherwise noted.

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, subpart EE, consisting of §§1.60000 through 1.60007, was added. Section 1.60000 was added, effective Oct. 20, 2022, with the remaining sections being delayed indefinitely.

§ 1.60000 Purpose.

The purpose of this subpart is to implement the Enhanced Competition Incentive Program (ECIP), a program designed to incentivize Qualifying Transactions in the Wireless Radio Services to increase spectrum access for small carriers and Tribal Nations and to increase competition, and also facilitate the provision of advanced telecommunications services in rural areas by eligible entities.

[87 FR 57417, Sept. 20, 2022]

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, §1.60000 of subpart EE was added, effective Oct. 20, 2022.

§ 1.60001 Definitions.

The following definitions are applicable to the ECIP.

(a) *Affiliate*. A person holding an attributable interest in an applicant if such individual or entity:

(1) Directly or indirectly controls or has the power to control the applicant; or

(2) Is directly or indirectly controlled by the applicant; or

(3) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant; or

(4) Has an ''identity of interest'' with the applicant.

NOTE 1 TO PARAGRAPH (A). See §§1.2110 and 1.2112(a)(1) through (7) for further clarification on determining affiliation.

(b) *Qualifying transaction*. A transaction between unaffiliated parties involving a partition and/or disaggregation, long-term leasing arrangement, or full assignment that meets the requirements of either the small carrier or Tribal Nation transaction prong pursuant to §1.60002 or the rural-focused transaction prong pursuant to §1.60003.

(c) *Qualifying geography*. Qualifying Geography is the minimum geography threshold required for the rural-focused transaction prong.

(d) *Rural area*. Rural area is any area except:

(1) A city, town, or incorporated area that has a population of more than 20,000 inhabitants; or

(2) An urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants.

(e) *Small carrier*. A small carrier is a carrier, defined as any person engaged

as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy in section 3 of the Communications Act of 1934 (47 U.S.C. 153), that:

(1) Has not more than 1,500 employees (as determined under 13 CFR 121.106); and

(2) Offers services using the facilities of the carrier.

(f) *Transaction geography*. Transaction Geography is the total geography included in a Qualifying Transaction.

(g) *Tribal nation*. A Tribal Nation is any federally-recognized American Indian Tribe and Alaska Native Village, the consortia of federally recognized Tribes and/or Native Villages, and other entities controlled and majority-owned by such Tribes or consortia.

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, §1.60001 of subpart EE was added. This action was delayed indefinitely.

§1.60002 Application requirements for program participation.

Applicants seeking to participate in the ECIP must submit an application on FCC Form 603 or 608, as applicable, to the Wireless Telecommunications Bureau for review and approval that details a Qualifying Transaction through a partition and/or disaggregation pursuant to §1.950, a full assignment pursuant to §1.948, a long-term spectrum manager lease arrangement pursuant to §1.9020, or a long-term *de facto* transfer lease arrangement pursuant to §1.9030, and that:

(a) Designates that the Qualifying Transaction identified in the application seeks consideration under the ECIP;

(b) Selects the prong applicable to its Qualifying Transaction, either §1.60003 or §1.60004, but not both, even if a party to the transaction is eligible under both prongs, and demonstrates that the applicants meet each requirement under §1.60003 or §1.60004;

(c) Demonstrates that the applicants to the Qualifying Transaction are unaffiliated by providing a list of all affiliated entities for each party to the transaction through the filing of a new FCC Form 602, or the filing of an updated FCC Form 602 if the ownership information is not current;

(d) Includes a certification that the applicants to the Qualifying Transaction are not barred from the ECIP pursuant to §1.60007;

(e) Includes a certification that the license(s) included in the application have not previously received benefits under the ECIP pursuant to §1.60005(e);

(f) Includes a certification that the applicants entered into the Qualifying Transaction in good faith and that the licensee/lessor reasonably believes the assignee/lessee has the resources and a bona fide intent to meet the program's obligations;

(g) Includes a certification that the assignor or lessor either did not confer any benefit (monetary or otherwise) to the assignee or lessee as consideration for entering into the proposed ECIP transaction or, if benefits were conferred to the assignee or lessee, the application must include a narrative with a detailed description of any benefits so conferred by the assignor or lessor to the assignee or lessee, respectively; and

(h) Includes a certification that any lease arrangement entered into for purposes of ECIP participation is for a minimum term of five (5) years, whether a long-term *de facto* transfer lease arrangement or a long-term spectrum manager lease arrangement.

[87 FR 57417, Sept. 20, 2022]

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, §1.60002 of subpart EE was added. This action was delayed indefinitely.

§1.60003 Small carrier or tribal nation transaction prong.

(a) *Eligibility*. The following parties are eligible to participate through a Qualifying Transaction under the small carrier or Tribal Nation transaction prong of the ECIP: an assignor that is a covered geographic licensee as defined under §1.907; a lessor in an included service as set forth in §1.9005 that is also a covered geographic licensee as defined under §1.907; and an unaffiliated assignee or unaffiliated lessee that is a small carrier or a Tribal Nation as defined in this subpart, except that a transaction shall not be eligible for participation in the ECIP under this prong if it includes either:

(1) A license(s) with existing shared construction obligations pursuant to §1.950(g);

(2) An application to participate in ECIP that includes an election from the parties to share construction obligations pursuant to §1.950(g);

(3) A light-touch leasing spectrum manager lease arrangement(s) of 3.5 GHz Priority Access Licenses in the Citizens Band Radio Service; or

(4) An application to participate in ECIP that includes a barred party pursuant to §1.60007.

(b) *Qualification requirements.* An applicant in a Qualifying Transaction under the small carrier or Tribal Nation transaction prong must demonstrate that:

(1) The ECIP transaction involving a disaggregation, partition/disaggregation in combination, full license assignment, or a lease, includes a minimum of 50% of the licensed spectrum, and meets the minimum spectrum threshold at every point in the Transaction Geography (where the percentage is calculated at any point as the amount of spectrum being assigned/leased (in megahertz)/total spectrum held under the license (in megahertz);

(2) The ECIP transaction involving a partition, partition/disaggregation in combination, full license assignment, or a lease, includes a minimum Transaction Geography of 25% of the total licensed area for licenses with a licensed area that contains 30,000 square miles or less, or a minimum Transaction Geography of 10% of the total licensed area for licenses with a licensed area 30,001 square miles or larger;

(3) If a lease arrangement, the minimum term of a long-term spectrum manager lease or *de facto* transfer lease is at least five (5) years; and

(4) The ECIP transaction was entered into in good faith with a bona fide intent by all parties to meet the program's obligations.

(c) *Qualifying Transaction limitations.* Multiple licenses may be included in a Qualifying Transaction between unaffiliated parties under this prong, however, spectrum and geography cannot be aggregated across multiple licenses to meet the respective minimum thresholds; each license in a Qualifying Transaction shall be considered separately and must independently meet the respective minimum spectrum and geography thresholds in paragraph (b) of this section. Each license included in a Qualifying Transaction under this prong shall either be the subject of an assignment (full, partition and/or disaggregation) or a lease arrangement, but not both. A party to a Qualifying Transaction under this prong is not permitted to assign a part of a license and lease a different part of the same license to meet the respective minimum spectrum and geographic thresholds.

[87 FR 57417, Sept. 20, 2022]

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, §1.60003 of subpart EE was added. This action was delayed indefinitely.

§1.60004 Rural-focused transaction prong.

(a) *Eligibility.* The following parties are eligible to participate through a Qualifying Transaction under the rural-focused transaction prong of the ECIP: an assignor that is a covered geographic licensee as defined by §1.907; a lessor in an included service as set forth in §1.9005 that is also a covered geographic licensee as defined by §1.907; and an unaffiliated assignee or lessee that commits to meeting the requirements of the rural-focused transaction prong, except that a transaction shall not be eligible for participation in the ECIP under this prong if it includes either:

(1) A license(s) with existing shared construction obligations pursuant to §1.950(g);

(2) An application to participate in ECIP that includes an election from the parties to share construction obligations pursuant to §1.950(g);

(3) A light-touch leasing spectrum manager lease arrangement(s) of 3.5 GHz Priority Access Licenses in the Citizens Band Radio Service; or

(4) An application to participate in ECIP that includes a barred party pursuant to §1.60007.

(b) *Qualification requirements.* An applicant in a Qualifying Transaction under the rural-focused transaction prong must demonstrate that:

(1) The ECIP transaction involving a disaggregation, partition/disaggregation in combination, or a

lease, includes a minimum of 50% of the licensed spectrum, and meets the minimum spectrum threshold at every point in the Transaction Geography (where the percentage is calculated at any point as the amount of spectrum being assigned/leased (in megahertz)/ total spectrum held under the license (in megahertz));

(2) The minimum Qualifying Geography threshold of exclusively rural area is included in the application based on the following scaled categories:

(i) 300 contiguous square miles for contributing licenses with licensed area containing up to 30,000 square miles;

(ii) 900 contiguous square miles for contributing licenses with licensed area containing between 30,001–90,000 square miles;

(iii) 5,000 contiguous square miles for contributing licenses with licensed area containing between 90,001–500,000 square miles; or

(iv) 15,000 contiguous square miles for contributing licenses with licensed area containing 500,001 square miles or more;

(3) If a lease arrangement, the minimum term of a long-term spectrum manager lease or *de facto* transfer lease is at least five (5) years; and

(4) The ECIP transaction was entered into in good faith with a bona fide intent by all parties to meet the program's obligations.

(c) *Multiple contributing licenses.* Qualifying Transactions between unaffiliated parties under the rural-focused transaction prong must specify at least one area of Qualifying Geography, and one or more licenses may contribute, via any combination of full assignment, partitioning and/or disaggregation, and/or lease(s), provided the Qualifying Geography intersects each contributing license included in the underlying application. Where multiple licenses with different size licensed areas are included in the Qualifying Transaction and each contributes to the Qualifying Geography, the Qualifying Geography must consist of the minimum geographic threshold applicable to the contributing license with the greatest square mileage in its licensed area.

[87 FR 57417, Sept. 20, 2022]

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, §1.60004 of subpart EE was added. This action was delayed indefinitely.

§1.60005 Program benefits.

(a) *Program benefits.* The following benefits for license(s) included in an ECIP Qualifying Transaction filed pursuant to §1.60002, shall be conferred upon consummation of a Commission approved assignment application, grant of a *de facto* transfer lease application, or acceptance of a spectrum manager lease application, as specified:

(1) *License term extension.* All parties to a partition and/or disaggregation Qualifying Transaction; the lessor entering into a spectrum lease arrangement Qualifying Transaction; and the assignee in a full license assignment Qualifying Transaction, shall receive a five-year license term extension on the license(s) subject to the application.

(2) *Construction extension.* All parties to a partition and/or disaggregation Qualifying Transaction; the lessor entering into a spectrum lease arrangement Qualifying Transaction; and the assignee in a full license assignment Qualifying Transaction, shall receive a one-year construction extension of both the interim and final performance requirement deadline, where applicable, on the license(s) subject to the application. Where the Commission has previously extended a performance requirement deadline on the license(s) and that deadline has not passed, the one year extension conferred through ECIP is in addition to the prior extension, provided the extension that was previously granted, whether by rule or through waiver, is transferrable, and the assignee separately justifies such relief if required.

(3) *Substitution of alternative construction requirement.* The assignee in a qualifying partition, combination partition disaggregation transaction, or full license assignment filed under the rural focused-transaction prong in §1.60004, shall be subject to the alternative construction requirement set forth in §1.60006 in lieu of any applicable service-based performance requirement for the license(s) resulting from

an ECIP transaction. Where the Commission has previously modified the assignor's substantive service-based performance requirement through conditions granted by waiver and such requirements have not been met, the assignee will receive the substituted alternative construction requirement benefit if the assignee separately requests, and is granted, a waiver.

(b) *Limitation on duplicative benefits.* (1) A license included in a Commission approved Qualifying Transaction in the ECIP shall be eligible for program benefits a single time per license for the license term and all subsequent renewal terms.

(2) A license, including a license resulting from a partition and/or disaggregation, previously included in a Qualifying Transaction approved by the Commission in the ECIP, shall be ineligible to receive benefits in any subsequent ECIP transaction, regardless of whether the current licensee was the beneficiary in the original or a subsequent Qualifying Transaction.

[87 FR 57417, Sept. 20, 2022]

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, §1.60005 of subpart EE was added. This action was delayed indefinitely.

§1.60006 Program obligations.

(a) *Compliance with requirements under selected prong.* An assignee or lessee must comply with the requirements of either the small carrier or Tribal Nation transaction prong in §1.60003 or the rural-focused transaction prong in §1.60004, as selected in its ECIP application, and is not permitted to change prongs after the consummation of the Commission approved assignment application, grant of a *de facto* transfer lease application, or acceptance of a spectrum manager lease application for a Qualifying Transaction in ECIP.

(b) *Construction requirement for rural-focused transaction prong assignees.* Assignees shall be subject to the following construction requirements for any resulting license(s) granted in a Commission approved Qualifying Transaction through partition, a combination partition/disaggregation, or full license assignment filed under the rural-focused transaction prong in ECIP, which supersedes any service-based requirement:

(1) The assignee must construct and operate, or provide signal coverage and offer service to, 100% of the Qualifying Geography identified in the Commission approved Qualifying Transaction.

(2) The construction period is the applicable construction deadline identified on the respective license(s), as extended by §1.60005. If no such deadline remains for the license(s), the assignee must construct and operate, or provide signal coverage and offer service to, 100% of the Qualifying Geography no later than two (2) years after the consummation of the Commission approved application.

(3) Where the assignee is subject to both an interim and final performance benchmark, the performance requirements in this paragraph (b) shall replace the interim performance benchmark and the assignee shall not be subject to a final performance requirement. Where the assignee has only a remaining final performance requirement, the performance requirements in this paragraph (b) shall replace the final benchmark.

(4) All end user devices throughout the Qualifying Geography must be capable of operation on all spectrum bands associated with license(s) that contribute to the Qualifying Geography.

(5) Consistent with §1.946(d), notification of completion of construction must be provided to the Commission through the filing of FCC Form 601, no later than 15 days after the applicable construction deadline or the expiration of the two (2) year period in paragraph (b)(2) of this section.

(c) *Operational requirement for rural-focused transaction prong assignees.* Assignees in a Commission approved rural-focused transaction pursuant to §1.60004 are subject to the following operational requirements:

(1) Assignees must construct and operate in, or provide signal coverage and offer service to, 100% of the Qualifying Geography identified in the Commission approved Qualifying Transaction for a period of at least three (3) consecutive years;

(2) Operation or service must not fall below that used to meet the construction requirement in paragraph (b) of

this section for the entire three (3) year period; and

(3) Assignees must construct and operate, or provide signal coverage and offer service, as required pursuant to paragraph (b) of this section, by the applicable construction deadline identified on the license(s), as extended by §1.60005. Where no such deadline remains for the license(s), the three (3) year continuous operational requirement must commence no later than two (2) years after the consummation of the Commission approved application filed pursuant to §1.60002.

(d) *Construction and operational requirements for rural-focused transaction prong leases.* Lessees must construct and operate, or provide signal coverage and offer service to, 100% of the Qualifying Geography identified in the underlying Qualifying Transaction that was the basis for Commission approval in the ECIP. Lessees must meet this requirement no later than two (2) years after grant of the underlying *de facto* transfer lease application or acceptance of the underlying spectrum manager lease application, and must maintain operation for a period of at least three (3) consecutive years during any period within the initial minimum required five (5) year lease term.

(e) *Operational requirement notifications.* Assignees and/or lessees of rural-focused transactions subject to §1.60004 must file the following notifications to demonstrate compliance with the requirements in paragraphs (a) through (c) of this section:

(1) *Initial operational requirement notification.* Assignees and/or lessees must file an initial operational notification with the Commission within 30 days of the commencement of operations that:

(i) Provides the date operations began;

(ii) Certifies that the operational requirement of 100% coverage of the Qualifying Geography for that assigned license or lease has been satisfied; and

(iii) Provides technical data demonstrating such compliance.

(2) *Final operational requirement notification.* Assignees and/or lessees must file a final operational notification requirement with the Commission within 30 days of completion of the three consecutive year operational requirement that:

(i) Certifies that the operational requirement of 100% coverage of the Qualifying Geography for three (3) consecutive years has been satisfied;

(ii) Provides the date the three (3) year period was completed; and

(iii) Provides technical data demonstrating the coverage provided during the three (3) year period.

(f) *Holding period.* Assignees and/or lessees participating in ECIP under either the small carrier or Tribal Nation transaction prong set forth in §1.60003, or the rural-focused transaction prong set forth in §1.60004, must comply with the following obligations:

(1) *Assignees.* An assignee of a license(s) granted in a Qualifying Transaction involving a partition and/or disaggregation or full assignment is required to hold any such license(s) for a period of at least five (5) years, commencing upon the consummation date of the Commission approved application filed pursuant to §1.60002. During this holding period, except as provided in paragraph (g) of this section, the license(s) received through ECIP is not permitted to be further partitioned, disaggregated, assigned, or leased.

(2) *Lessees.* Lease arrangements subject to the ECIP shall not be terminated by either lessor or lessee prior to the expiration of the five (5) year term required by §1.60003(b)(3) or §1.60004(b)(3), where applicable, and, except as provided in paragraph (g) of this section, may not be transferred or subleased to another party during the five (5) year term.

(3) *Rural-focused transaction prong assignees.* Any license(s) resulting from a Qualifying Transaction under the rural-focused transaction prong pursuant to §1.60004 may not be subsequently assigned (partition and/or disaggregation or full assignment), leased or transferred until the following conditions have been met:

(i) The license(s) has been held by the assignee of the Qualifying Transaction for a period of at least five (5) years commencing on the date of consummation of the Commission approved application filed pursuant to §1.60002; and

(ii) The construction and operational requirements pursuant to paragraphs

(a) through (d) of this section, where applicable, have been satisfied.

(g) *Exceptions*. The requirements in paragraphs (a) through (e) of this section do not apply to pro forma transfers pursuant to §1.948(c)(1), and do not apply to any area of the Transaction Geography and/or Qualifying Geography, which is covered by a lease or sublease entered into for the purpose of enabling a Contraband Interdiction System (as defined in §20.30 of this chapter).

[87 FR 57417, Sept. 20, 2022]

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, §1.60006 of subpart EE was added. This action was delayed indefinitely.

§1.60007 Penalties.

(a) *Automatic termination*. A license(s) resulting from a Qualifying Transaction in the ECIP shall be automatically terminated without specific Commission action or further notice to the licensee, superseding any service-based penalty, if the assignee fails to comply with any of the following:

(1) The five (5) year holding period pursuant to §1.60006(e);

(2) The construction requirement pursuant to §1.60006(a) or (c), or any remaining service-based performance requirement, where applicable; or

(3) The operational requirements pursuant to §1.60006(b) or (c), where applicable.

(b) *Bar from future program participation*. A party participating in a Commission approved Qualifying Transaction in the ECIP shall be prohibited from future participation in the ECIP where it is found that it:

(1) Violated the five (5) year holding period requirements of §1.60006(e), including premature termination of a lease or entering into a sublease in violation of §1.60006(f)(2), if applicable;

(2) Failed to meet the construction requirement of §1.60006(a) or (c), or any remaining service-based performance requirement, where applicable;

(3) Failed to meet the operational requirements of §1.60006(b) or (c), where applicable; or

(4) Entered into a bad faith transaction in violation of §1.60003(b)(4) or §1.60004(b)(4).

(c) *Effect of program bar*. A bar from ECIP is applied as follows:

(1) A program bar shall commence upon the date the assignee or lessee receives notice from the Commission via electronic mail finding a violation pursuant to paragraph (b) of this section. A barred party shall be eligible to continue to receive benefits from Qualifying Transactions in ECIP that are unrelated to the Qualifying Transaction that resulted in the program bar, provided that those benefits were conferred prior to the commencement of the program bar, as a result of the Commission accepting a consummation of an approved assignment application, granting a *de facto* transfer lease application, or accepting a spectrum manager lease application, as applicable.

(2) A program bar shall also apply to affiliates of barred parties. Third-parties shall be considered affiliates of a barred party if they qualify as an affiliate under §1.60001. A prospective ECIP participant will be considered a barred affiliate when either:

(i) The third-party was identified, or should have been identified, as an affiliate on the initial Commission approved application for the Qualifying Transaction resulting in the bar; or

(ii) The third-party identifies, or should have identified, a barred affiliate in a subsequent application to participate in the ECIP, regardless of whether they were affiliates at the time of the filing of the initial application for a Qualifying Transaction resulting in the bar.

(3) Transactions that include a barred party shall not be eligible for ECIP benefits, even if all other qualifications are satisfied.

[87 FR 57417, Sept. 20, 2022]

EFFECTIVE DATE NOTE: At 87 FR 57417, Sept. 20, 2022, §1.60007 of subpart EE was added. This action was delayed indefinitely.

APPENDIX A TO PART 1—A PLAN OF COOPERATIVE PROCEDURE IN MATTERS AND CASES UNDER THE PROVISIONS OF SECTION 410 OF THE COMMUNICATIONS ACT OF 1934

(Approved by the Federal Communications Commission October 25, 1938, and approved by the National Association of Railroad and Utilities Commissioners on November 17, 1938.)

PRELIMINARY STATEMENT CONCERNING THE PURPOSE AND EFFECT OF THE PLAN

Section 410 of the Communications Act of 1934 authorizes cooperation between the Federal Communications Commission, hereinafter called the Federal Commission, and the State commissions of the several States, in the administration of said Act. Subsection (a) authorizes the reference of any matter arising in the administration of said Act to a board to be composed of a member or members from each of the States in which the wire, or radio communication affected by or involved in the proceeding takes place, or is proposed. Subsection (b) authorizes conferences by the Federal Commission with State commissions regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commissions and of said Federal Commission and joint hearings with State commissions in connection with any matter with respect to which the Federal Commission is authorized to act.

Obviously, it is impossible to determine in advance what matters should be the subject of a conference, what matters should be referred to a board, and what matters should be heard at a joint hearing of State commissions and the Federal Commission. It is understood, therefore, that the Federal Commission or any State commission will freely suggest cooperation with respect to any proceedings or matter affecting any carrier subject to the jurisdiction of said Federal Commission and of a State commission, and concerning which it is believed that cooperation will be in the public interest.

To enable this to be done, whenever a proceeding shall be instituted before any commission, Federal or State, in which another commission is believed to be interested, notice should be promptly given each such interested commission by the commission before which the proceeding has been instituted. Inasmuch, however, as failure to give notice as contemplated by the provisions of this plan will sometimes occur purely through inadvertence, any such failure should not operate to deter any commission from suggesting that any such proceeding be made the subject matter of cooperative action, if cooperation therein is deemed desirable.

It is understood that each commission whether or not represented in the National Association of Railroad and Utilities Commissioners, must determine its own course of action with respect to any proceeding in the light of the law under which, at any given time, it is called upon to act, and must be guided by its own views of public policy; and that no action taken by such Association can in any respect prejudice such freedom of action. The approval by the Association of this plan of cooperative procedure, which was jointly prepared by the Association's standing Committee on Cooperation between Federal and State commissions and said Federal Commission, is accordingly recommendatory only; but such plan is designed to be, and it is believed that it will be, a helpful step in the promotion of cooperative relations between the State commissions and said Federal Commission.

NOTICE OF INSTITUTION OF PROCEEDING

Whenever there shall be instituted before the Federal Commission any proceeding involving the rates of any telephone or telegraph carrier, the State commissions of the States affected thereby will be notified immediately thereof by the Federal Commission, and each notice given a State commission will advise such commission that, if it deems the proceeding one which should be considered under the cooperative provisions of the Act, it should either directly or through the National Association of Railroad and Utilities Commissioners, notify the Federal Commission as to the nature of its interest in said matter and request a conference, the creation of a joint board, or a joint hearing as may be desired, indicating its preference and the reasons therefor. Upon receipt of such request the Federal Commission will consider the same and may confer with the commission making the request and with other interested commission, or with representatives of the National Association of Railroad and Utilities Commissioners, in such manner as may be most suitable; and if cooperation shall appear to be practicable and desirable, shall so advise each interested State commission, directly, when such cooperation will be by joint conference or by reference to a joint board appointed under said sec. 410 (a), and, as hereinafter provided, when such cooperation will be by a joint hearing under said sec. 410(b).

Each State commission should in like manner notify the Federal Commission of any proceeding instituted before it involving the toll telephone rates or the telegraph rates of any carrier subject to the jurisdiction of the Federal Commission.

PROCEDURE GOVERNING JOINT CONFERENCES

The Federal Commission, in accordance with the indicated procedure, will confer with any State commission regarding any matter relating to the regulation of public utilities subject to the jurisdiction of either commission. The commission desiring a conference upon any such matter should notify the other without delay, and thereupon the Federal Commission will promptly arrange for a conference in which all interested State commissions will be invited to be present.

PROCEDURE GOVERNING MATTERS REFERRED TO A BOARD

Whenever the Federal Commission, either upon its own motion or upon the suggestion of a State commission, or at the request of any interested party, shall determine that it is desirable to refer a matter arising in the administration of the Communications Act of 1934 to a board to be composed of a member or members from the State or States affected or to be affected by such matter, the procedure shall be as follows:

The Federal Commission will send a request to each interested State commission to nominate a specified number of members to serve on such board.

The representation of each State concerned shall be equal, unless one or more of the States affected chooses to waive such right of equal representation. When the member or members of any board have been nominated and appointed, in accordance with the provisions of the Communications Act of 1934, the Federal Commission will make an order referring the particular matter to such board, and such order shall fix the time and place of hearing, define the force and effect the action of the board shall have, and the manner in which its proceedings shall be conducted. The rules of practice and procedure, as from time to time adopted or prescribed by the Federal Commission, shall govern such board, as far as applicable.

PROCEDURE GOVERNING JOINT HEARINGS

Whenever the Federal Commission, either upon its own motion or upon suggestions made by or on behalf of any interested State commission or commissions, shall determine that a joint hearing under said sec. 410(b) is desirable in connection with any matter pending before said Federal Commission, the procedure shall be as follows:

(a) The Federal Commission will notify the general solicitor of the National Association of Railroad and Utilities Commissioners that said Association, or, if not more than eight States are within the territory affected by the proceeding, the State commissions interested, are invited to name Cooperating Commissioners to sit with the Federal Commission for the hearing and consideration of said proceeding.

(b) Upon receipt of any notice from said Federal Commission inviting cooperation, if not more than eight States are involved, the general solicitor shall at once advise the State commissions of said States, they being represented in the membership of the association, of the receipt of such notice, and shall request each such commission to give advice to him in writing, before a date to be indicated by him in his communication requesting such advice (1) whether such commission will cooperate in said proceeding, (2) if it will, by what commissioner it will be represented therein.

(c) Upon the basis of replies received, the general solicitor shall advise the Federal Commission what States, if any, are desirous of making the proceeding cooperative and by what commissioners they will be represented, and he shall give like advice to each State commission interested therein.

(d) If more than eight States are interested in the proceeding, because within territory for which rates will be under consideration therein, the general solicitor shall advise the president of the association that the association is invited to name a cooperating committee of State commissioners representing the States interested in said proceeding.

The president of the association shall thereupon advise the general solicitor in writing (1) whether the invitation is accepted on behalf of the association, and (2) the names of commissioners selected to sit as a cooperating committee. The president of the association shall have the authority to accept or to decline said invitation for the association, and to determine the number of commissioners who shall be named on the cooperating committee, provided that his action shall be concurred in by the chairman of the association's executive committee. In the event of any failure of the president of the association and chairman of its executive committee to agree, the second vice president of the association (or the chairman of its committee on cooperation between State and Federal commissions, if there shall be no second vice president) shall be consulted, and the majority opinion of the three shall prevail. Consultations and expressions of opinion may be by mail or telegraph.

(e) If any proceeding, involving more than eight States, is pending before the Federal Commission, in which cooperation has not been invited by that Commission, which the association's president and the first and second vice presidents, or any two of them, consider should be made a cooperating proceeding, they may instruct the general solicitor to suggest to the Federal Commission that the proceeding be made a cooperative proceeding; and any State commission considering that said proceeding should be made cooperative may request the president of the association or the chairman of its executive committee to make such suggestion after consideration with the executive officers above named. If said Federal Commission shall assent to the suggestion, made as aforesaid, the president of the association shall have the same authority to proceed, and shall proceed in the appointment of a cooperating committee, as is provided in other cases involving more than eight States, wherein the Federal Commission has invited cooperation, and the invitation has been accepted.

(f) Whenever any case is pending before the Federal Commission involving eight States or less, which a commission of any of said States considers should be made cooperative, such commission, either directly or through the general solicitor of the association, may suggest to the Federal Commission that the proceeding be made cooperative. If said Federal Commission accedes to such suggestion, it will notify the general solicitor of the association to that effect and thereupon the general solicitor shall proceed as is provided in such case when the invitation has been made by the Federal Commission without State commission suggestion.

APPOINTMENT OF COOPERATING COMMISSIONERS BY THE PRESIDENT

In the appointment of any cooperating committee, the president of the association shall make appointments only from commissions of the States interested in the particular proceeding in which the committee is to serve. He shall exercise his best judgment to select cooperating commissioners who are especially qualified to serve upon cooperating committees by reason of their ability and fitness; and in no case shall he appoint a commissioner upon a cooperating committee until he shall have been advised by such commissioner that it will be practicable for him to attend the hearings in the proceeding in which the committee is to serve, including the arguments therein, and the cooperative conferences, which may be held following the submission of the proceeding, to an extent that will reasonably enable him to be informed upon the issues in the proceeding and to form a reasonable judgment in the matters to be determined.

TENURE OF COOPERATORS

(a) No State commissioner shall sit in a cooperative proceeding under this plan except a commissioner who has been selected by his commission to represent it in a proceeding involving eight States or less, or has been selected by the president of the association to sit in a case involving more than eight States, in the manner hereinbefore provided.

(b) A commissioner who has been selected, as hereinbefore provided, to serve as a member of a cooperating committee in any proceeding, shall without further appointment, and without regard to the duration of time involved, continue to serve in said proceeding until the final disposition thereof, including hearings and conferences after any order or reopening, provided that he shall continue to be a State commissioner.

(c) No member of a cooperating committee shall have any right or authority to designate another commissioner to serve in his place at any hearing or conference in any proceeding in which he has been appointed to serve.

(d) Should a vacancy occur upon any cooperating committee, in a proceeding involving more than eight States, by reason of the death of any cooperating commissioner, or of his ceasing to be a State commissioner, or of other inability to serve, it shall be the duty of the president of the association to fill the vacancy by appointment, if, after communication with the chairman of the cooperating committee, it be deemed necessary to fill such vacancy.

(e) In the event of any such vacancy occurring upon a cooperating committee involving not more than eight States, the vacancy shall be filled by the commission from which the vacancy occurs.

COOPERATING COMMITTEE TO DETERMINE RESPECTING ANY REPORT OF STATEMENT OF ITS ATTITUDE

(a) Whenever a cooperating committee shall have concluded its work, or shall deem such course advisable, the committee shall consider whether it is necessary and desirable to make a report to the interested State commissions, and, if it shall determine to make a report, it shall cause the same to be distributed through the secretary of the association, or through the general solicitor to all interested commissions.

(b) If a report of the Federal Commission will accompany any order to be made in said proceeding, the Federal Commission will state therein the concurrence or nonconcurrence of said cooperating committee in the decision or order of said Federal Commission.

CONSTRUCTION HEREOF IN CERTAIN RESPECTS EXPRESSLY PROVIDED

It is understood and provided that no State or States shall be deprived of the right of participation and cooperation as hereinbefore provided because of nonmembership in the association. With respect to any such State or States, all negotiations herein specified to be carried on between the Federal Commission and any officer of such association shall be conducted by the Federal Commission directly with the chairman of the commission of such State or States.

[28 FR 12462, Nov. 22, 1963, as amended at 29 FR 4801, Apr. 4, 1964]

APPENDIX B TO PART 1—NATIONWIDE PROGRAMMATIC AGREEMENT FOR THE COLLOCATION OF WIRELESS ANTENNAS

SECOND AMENDMENT TO NATIONWIDE PROGRAMMATIC AGREEMENT

FOR THE COLLOCATION OF WIRELESS ANTENNAS

EXECUTED BY THE FEDERAL COMMUNICATIONS COMMISSION, THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

WHEREAS, the Federal Communications Commission (FCC), the Advisory Council on Historic Preservation (the Council) and the National Conference of State Historic Preservation Officers (NCSHPO) executed this Nationwide Collocation Programmatic Agreement on March 16, 2001 in accordance with 36 CFR Section 800.14(b) to address the Section 106 review process as it applies to the collocation of antennas; and,

WHEREAS, the FCC encourages collocation of antennas where technically and economically feasible, in order to reduce the need for new tower construction; and in its Wireless Infrastructure Report and Order, WT Docket No. 13–238, et al, released October 21, 2014, adopted initial measures to update and tailor the manner in which it evaluates the impact of proposed deployments on the environment and historic properties and committed to expeditiously conclude a program alternative to implement additional improvements in the Section 106 review process for small deployments that, because of their characteristics, are likely to have minimal and not adverse effects on historic properties; and,

WHEREAS, the Middle Class Tax Relief and Job Creation Act of 2012 (Title VI—Public Safety Communications and Electromagnetic Spectrum Auctions, Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012)) was adopted with the goal of advancing wireless broadband services, and the amended provisions in this Agreement further that goal; and,

WHEREAS, advances in wireless technologies since 2001 have produced systems that use smaller antennas and compact radio equipment, including those used in Distributed Antenna Systems (DAS) and small cell systems, which are a fraction of the size of traditional cell tower deployments and can be installed on utility poles, buildings, and other existing structures as collocations; and,

WHEREAS, the parties to this Collocation Agreement have taken into account new technologies involving use of small antennas that may often be collocated on utility poles, buildings, and other existing structures and increase the likelihood that such collocations will have minimal and not adverse effects on historic properties, and rapid deployment of such infrastructure may help meet the surging demand for wireless services, expand broadband access, support innovation and wireless opportunity, and enhance public safety—all to the benefit of consumers and the communities in which they live; and,

WHEREAS, the FCC, the Council, and NCSHPO have agreed that these new measures should be incorporated into this Collocation Agreement to better manage the Section 106 consultation process and streamline reviews for collocation of antennas; and,

WHEREAS, the FCC, the Council, and NCSHPO have crafted these new measures with the goal of promoting technological neutrality, with the goal of obviating the need for further amendments in the future as technologies evolve; and,

WHEREAS, notwithstanding the intent to draft provisions in a manner that obviates the need for future amendments, in light of the public benefits associated with rapid deployment of the facilities required to provide broadband wireless services, the FCC, the Council, and NCSHPO have agreed that changes in technology and other factors relating to the placement and operation of wireless antennas and associated equipment may necessitate further amendments to this Collocation Agreement in the future; and,

WHEREAS, the FCC, the Council, and NCSHPO have agreed that with respect to the amendments involving the use of small antennas, such amendments affect only the FCC's review process under Section 106 of the NHPA, and will not limit State and local governments' authority to enforce their own historic preservation requirements consistent with Section 332(c)(7) of the Communications Act and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012; and,

WHEREAS, the FCC, the Council, and NCSHPO acknowledge that federally recognized Indian tribes (Indian tribes), Native Hawaiian Organizations (NHOs), SHPO/THPOs, local governments, and members of the public make important contributions to the Section 106 review process, in accordance with Section 800.2(c) & (d) of the Council's rules, and note that the procedures for appropriate public notification and participation in connection with the Section 106 process are set forth the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (NPA); and,

WHEREAS, the parties hereto agree that the amended procedures described in this amendment to the Collocation Agreement are, with regard to collocations as defined

herein, a proper substitute for the FCC's compliance with the Council's rules, in accordance and consistent with Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR part 800; and,

WHEREAS, the FCC sought comment from Indian tribes and Native Hawaiian Organizations regarding the terms of this amendment to the Collocation Agreement by letters dated April 17, 2015, July 28, 2015, and May 12, 2016, as well as during face-to-face meetings and conference calls, including during the Section 106 Summit in conjunction with the 2015 annual conference of the National Association of Tribal Historic Preservation Officers (NATHPO); and,

WHEREAS, the terms of this amendment to the Collocation Agreement do not apply on ''tribal lands'' as defined under Section 800.16(x) of the Council's regulations, 36 CFR 800.16(x) (''Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.''); and,

WHEREAS, the terms of this amendment to the Collocation Agreement do not preclude Indian tribes or NHOs from consulting directly with the FCC or its licensees, tower companies and applicants for antenna licenses when collocation activities off tribal lands may affect historic properties of religious and cultural significance to Indian tribes or NHOs; and,

WHEREAS, the execution and implementation of this amendment to the Collocation Agreement will not preclude members of the public from filing complaints with the FCC or the Council regarding adverse effects on historic properties from any existing tower or any activity covered under the terms of this Collocation Agreement;

NOW THEREFORE, in accordance with Stipulation XI (as renumbered by this amendment), the FCC, the Council, and NCSHPO agree to amend the Collocation Agreement to read as follows:

NATIONWIDE PROGRAMMATIC AGREEMENT

FOR THE COLLOCATION OF WIRELESS ANTENNAS

EXECUTED BY THE FEDERAL COMMUNICATIONS COMMISSION, THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

WHEREAS, the Federal Communications Commission (FCC) establishes rules and procedures for the licensing of wireless communications facilities in the United States and its Possessions and Territories; and,

WHEREAS, the FCC has largely deregulated the review of applications for the construction of individual wireless communications facilities and, under this framework, applicants are required to prepare an Environmental Assessment (EA) in cases where the applicant determines that the proposed facility falls within one of certain environmental categories described in the FCC's rules (47 CFR 1.1307), including situations which may affect historical sites listed or eligible for listing in the National Register of Historic Places (''National Register''); and,

WHEREAS, Section 106 of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) (''the Act'') requires federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment; and,

WHEREAS, Section 800.14(b) of the Council's regulations, ''Protection of Historic Properties'' (36 CFR 800.14(b)), allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs; and,

WHEREAS, in August 2000, the Council established a Telecommunications Working Group to provide a forum for the FCC, Industry representatives, State Historic Preservation Officers (SHPOs) and Tribal Historic Preservation Officers (THPOs), and the Council to discuss improved coordination of Section 106 compliance regarding wireless communications projects affecting historic properties; and,

WHEREAS, the FCC, the Council and the Working Group have developed this Collocation Programmatic Agreement in accordance with 36 CFR 800.14(b) to address the Section 106 review process as it applies to the collocation of antennas (collocation being defined in Stipulation I.B below); and,

WHEREAS, the FCC encourages collocation of antennas where technically and economically feasible, in order to reduce the need for new tower construction; and,

WHEREAS, the parties hereto agree that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be minimal and not adverse, and that in the cases where an adverse effect might occur, the procedures provided and referred to herein are proper and sufficient, consistent with Section 106, to assure that the FCC will take such effects into account; and,

WHEREAS, the execution of this Nationwide Collocation Programmatic Agreement will streamline the Section 106 review of collocation proposals and thereby reduce the need for the construction of new towers, thereby reducing potential effects on historic properties that would otherwise result from the construction of those unnecessary new towers; and,

WHEREAS, the FCC and the Council have agreed that these measures should be incorporated into a Nationwide Programmatic Agreement to better manage the Section 106 consultation process and streamline reviews for collocation of antennas; and,

WHEREAS, since collocations reduce both the need for new tower construction and the potential for adverse effects on historic properties, the parties hereto agree that the terms of this Agreement should be interpreted and implemented wherever possible in ways that encourage collocation; and,

WHEREAS, the parties hereto agree that the procedures described in this Agreement are, with regard to collocations as defined herein, a proper substitute for the FCC's compliance with the Council's rules, in accordance and consistent with Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR part 800; and,

WHEREAS, the FCC has consulted with the National Conference of State Historic Preservation Officers (NCSHPO) and requested the President of NCSHPO to sign this Nationwide Collocation Programmatic Agreement in accordance with 36 CFR 800.14(b)(2)(iii); and,

WHEREAS, the FCC sought comment from Indian tribes and Native Hawaiian Organizations (NHOs) regarding the terms of this Nationwide Programmatic Agreement by letters of January 11, 2001 and February 8, 2001; and,

WHEREAS, the terms of this Programmatic Agreement do not apply on ''tribal lands'' as defined under Section 800.16(x) of the Council's regulations, 36 CFR 800.16(x) (''Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.''); and,

WHEREAS, the terms of this Programmatic Agreement do not preclude Indian tribes or Native Hawaiian Organizations from consulting directly with the FCC or its licensees, tower companies and applicants for antenna licenses when collocation activities off tribal lands may affect historic properties of religious and cultural significance to Indian tribes or Native Hawaiian organizations; and,

WHEREAS, the execution and implementation of this Nationwide Collocation Programmatic Agreement will not preclude Indian tribes or NHOs, SHPO/THPOs, local governments, or members of the public from filing complaints with the FCC or the Council regarding adverse effects on historic properties from any existing tower or any activity covered under the terms of this Programmatic Agreement.

NOW, THEREFORE, the FCC, the Council, and NCSHPO agree that the FCC will meet its Section 106 compliance responsibilities for the collocation of antennas as follows.

STIPULATIONS

The FCC, in coordination with licensees, tower companies, applicants for antenna licenses, and others deemed appropriate by the FCC, will ensure that the following measures are carried out.

I. DEFINITIONS

For purposes of this Nationwide Programmatic Agreement, the following definitions apply.

A. ''Antenna'' means an apparatus designed for the purpose of emitting radio frequency (''RF'') radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a Tower, structure, or building as part of the original installation of the antenna. For purposes of this Agreement, the term Antenna does not include unintentional radiators, mobile stations, or devices authorized under Part 15 of the FCC's rules.

B. ''Collocation'' means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

C. ''NPA'' is the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (47 CFR part 1, App. C).

D. ''Tower'' is any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.

E. ''Substantial increase in the size of the tower'' means:

(1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet,

or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) The mounting of the proposed antenna would expand the boundaries of the current tower site by more than 30 feet in any direction or involve excavation outside these expanded boundaries. The current tower site is defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

II. APPLICABILITY

A. This Nationwide Collocation Programmatic Agreement applies only to the collocation of antennas as defined in Stipulations I.A and I.B, above.

B. This Nationwide Collocation Programmatic Agreement does not cover any Section 106 responsibilities that federal agencies other than the FCC may have with regard to the collocation of antennas.

III. COLLOCATION OF ANTENNAS ON TOWERS CONSTRUCTED ON OR BEFORE MARCH 16, 2001

A. An antenna may be mounted on an existing tower constructed on or before March 16, 2001 without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

1. The mounting of the antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.E, above; or,

2. The tower has been determined by the FCC to have an adverse effect on one or more historic properties, where such effect has not been avoided or mitigated through a conditional no adverse effect determination, a Memorandum of Agreement, a programmatic agreement, or a finding of compliance with Section 106 and the NPA; or,

3. The tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or,

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

IV. COLLOCATION OF ANTENNAS ON TOWERS CONSTRUCTED AFTER MARCH 16, 2001

A. An antenna may be mounted on an existing tower constructed after March 16, 2001 without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

1. The Section 106 review process for the existing tower set forth in 36 CFR part 800 (including any applicable program alternative approved by the Council pursuant to 36 CFR 800.14) and any associated environmental reviews required by the FCC have not been completed; or,

2. The mounting of the new antenna will result in a substantial increase in the size of the tower as defined in Stipulation I.E, above; or,

3. The tower as built or proposed has been determined by the FCC to have an adverse effect on one or more historic properties, where such effect has not been avoided or mitigated through a conditional no adverse effect determination, a Memorandum of Agreement, a Programmatic Agreement, or otherwise in compliance with Section 106 and the NPA; or,

4. The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

V. COLLOCATION OF ANTENNAS ON BUILDINGS AND NON-TOWER STRUCTURES

A. An antenna may be mounted on a building or non-tower structure without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

1. The building or structure is over 45 years old, and the collocation does not meet the criteria established in Stipulation VI herein for collocations of small antennas;[1] or,

[1] For purposes of this Agreement, suitable methods for determining the age of a building or structure include, but are not limited to: (1) Obtaining the opinion of a consultant who meets the Secretary of Interior's Professional Qualifications Standards for Historian or for Architectural Historian (36 CFR part 61); or (2) consulting public records.

2. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of a historic district, the building or structure is within 250 feet of the boundary of the historic district, and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or,

3. The building or non-tower structure is a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places based upon the review of the FCC, licensee, tower company or applicant for an antenna license, and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or,

4. The collocation licensee or the owner of the building or non-tower structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

B. An antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted in the interior of a building, regardless of the building's age or location in a historic district and regardless of the antenna's size, without such collocation being reviewed through the Section 106 process set forth in the NPA, unless:

(1) The building is a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places; or,

(2) The collocation licensee or the owner of the building has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

C. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation V has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and the NPA for this particular collocation.

VI. ADDITIONAL EXCLUSION FOR COLLOCATION OF SMALL WIRELESS ANTENNAS AND ASSOCIATED EQUIPMENT ON BUILDINGS AND NON-TOWER STRUCTURES THAT ARE OUTSIDE OF HISTORIC DISTRICTS AND ARE NOT HISTORIC PROPERTIES

A. A small wireless antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted on an existing building or non-tower structure or in the interior of a building regardless of the building's or structure's age without such collocation being reviewed through the Section 106 process set forth in the NPA unless:

1. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of a historic district, the building or structure is within 250 feet of the boundary of the historic district, and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or,

2. The building or non-tower structure is a designated National Historic Landmark; or,

3. The building or non-tower structure is listed in or eligible for listing in the National Register of Historic Places, and the collocation does not meet the criteria established in Stipulation VII herein for collocations of small or minimally visible antennas; or,

4. The collocation licensee or the owner of the building or non-tower structure has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register; or,

5. The antennas and associated equipment exceed the volume limits specified below:

a. Each individual antenna, excluding the associated equipment (as defined in the definition of Antenna in Stipulation I.A.), that is part of the collocation must fit within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.*, one that would be the correct size to contain the equipment) that is individually no more than three cubic feet in volume, and all antennas on the structure, including any pre-existing antennas on the structure, must in aggregate fit within enclosures (or if the antennas are exposed, within imaginary enclosures, *i.e.*,

ones that would be the correct size to contain the equipment) that total no more than six cubic feet in volume; and,

b. All other wireless equipment associated with the structure, including pre-existing enclosures and including equipment on the ground associated with antennas on the structure, but excluding cable runs for the connection of power and other services, may not cumulatively exceed:

i. 28 cubic feet for collocations on all non-pole structures (including but not limited to buildings and water tanks) that can support fewer than 3 providers; or,

ii. 21 cubic feet for collocations on all pole structures (including but not limited to light poles, traffic signal poles, and utility poles) that can support fewer than 3 providers; or,

iii. 35 cubic feet for non-pole collocations that can support at least 3 providers; or,

iv. 28 cubic feet for pole collocations that can support at least 3 providers; or,

6. The depth and width of any proposed ground disturbance associated with the collocation exceeds the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project regardless of the extent of previous ground disturbance.

B. The volume of any deployed equipment that is not visible from public spaces at the ground level from 250 feet or less may be omitted from the calculation of volumetric limits cited in this Section.

C. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation VI has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and the NPA for this particular collocation.

VII. ADDITIONAL EXCLUSIONS FOR COLLOCATION OF SMALL OR MINIMALLY VISIBLE WIRELESS ANTENNAS AND ASSOCIATED EQUIPMENT IN HISTORIC DISTRICTS OR ON HISTORIC PROPERTIES

A. A small antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted on a building or non-tower structure or in the interior of a building that is (1) a historic property (including a property listed in or eligible for listing in the National Register of Historic Places) or (2) inside or within 250 feet of the boundary of a historic district without being reviewed through the Section 106 process set forth in the NPA, provided that:

1. The property on which the equipment will be deployed is not a designated National Historic Landmark.

2. The antenna or antenna enclosure (including any existing antenna), excluding associated equipment, is the only equipment that is visible from the ground level, or from public spaces within the building (if the antenna is mounted in the interior of a building), and provided that the following conditions are met:

a. No other antennas on the building or non-tower structure are visible from the ground level, or from public spaces within the building (for an antenna mounted in the interior of a building);

b. The antenna that is part of the collocation fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure *i.e.*, one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume; and,

c. The antenna is installed using stealth techniques that match or complement the structure on which or within which it is deployed;

3. The antenna's associated equipment is not visible from:

a. The ground level anywhere in a historic district (if the antenna is located inside or within 250 feet of the boundary of a historic district); or,

b. Immediately adjacent streets or public spaces at ground level (if the antenna is on a historic property that is not in a historic district); or,

c. Public spaces within the building (if the antenna is mounted in the interior of a building).

4. The facilities (including antenna(s) and associated equipment identified in the definition of Antenna in Stipulation I.A.) are installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials;

5. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance; and

6. The collocation licensee or the owner of the building or non-tower structure has not received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes

that qualify any affected historic property for eligibility or potential eligibility for the National Register.

B. A small antenna (including associated equipment included in the definition of Antenna in Stipulation I.A.) may be mounted on a utility pole or electric transmission tower (but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting) that is in active use by a utility company (as defined in Section 224 of the Communications Act) or by a cooperatively-owned, municipal, or other governmental agency and is either: (1) A historic property (including a property listed in or eligible for listing in the National Register of Historic Places); (2) located on a historic property (including a property listed in or eligible for listing in the National Register of Historic Places); or (3) located inside or within 250 feet of the boundary of a historic district, without being reviewed through the Section 106 process set forth in the NPA, provided that:

1. The utility pole or electric transmission tower on which the equipment will be deployed is not located on a designated National Historic Landmark;

2. The antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.*, one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure;

3. The wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 21 cubic feet in volume;

4. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance; and

5. The collocation licensee or the owner of the utility pole or electric transmission tower has not received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

C. Proposals to mount a small antenna on a traffic control structure (*i.e.*, traffic light) or on a light pole, lamp post or other structure whose primary purpose is to provide public lighting, where the structure is located inside or within 250 feet of the boundary of a historic district, are generally subject to review through the Section 106 process set forth in the NPA. These proposed collocations will be excluded from such review on a case-by-case basis, if (1) the collocation licensee or the owner of the structure has not received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties; and (2) the structure is not historic (not a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places) or considered a contributing or compatible element within the historic district, under the following procedures:

1. The applicant must request in writing that the SHPO concur with the applicant's determination that the structure is not a contributing or compatible element within the historic district.

2. The applicant's written request must specify the traffic control structure, light pole, or lamp post on which the applicant proposes to collocate and explain why the structure is not a contributing element based on the age and type of structure, as well as other relevant factors.

3. The SHPO has thirty days from its receipt of such written notice to inform the applicant whether it disagrees with the applicant's determination that the structure is not a contributing or compatible element within the historic district.

4. If within the thirty-day period, the SHPO informs the applicant that the structure is a contributing element or compatible element within the historic district or that the applicant has not provided sufficient information for a determination, the applicant may not deploy its facilities on that structure without completing the Section 106 review process.

5. If, within the thirty day period, the SHPO either informs the applicant that the structure is not a contributing or compatible element within the historic district, or the SHPO fails to respond to the applicant within the thirty-day period, the applicant has no further Section 106 review obligations, provided that the collocation meets the following requirements:

a. The antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.*, one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a

cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure;

b. The wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 21 cubic feet in volume; and,

c. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance.

D. A small antenna mounted inside a building or non-tower structure and subject to the provisions of this Stipulation VII is to be installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials.

E. Subsequent to the collocation of an antenna, should the SHPO/THPO or Council determine that the collocation of the antenna or its associated equipment installed under the terms of Stipulation VII has resulted in an adverse effect on historic properties, the SHPO/THPO or Council may notify the FCC accordingly. The FCC shall comply with the requirements of Section 106 and the NPA for this particular collocation.

VIII. REPLACEMENTS OF SMALL WIRELESS ANTENNAS AND ASSOCIATED EQUIPMENT

A. An existing small antenna that is mounted on a building or non-tower structure or in the interior of a building that is (1) a historic property (including a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places); (2) inside or within 250 feet of the boundary of a historic district; or (3) located on or inside a building or non-tower structure that is over 45 years of age, regardless of visibility, may be replaced without being reviewed through the Section 106 process set forth in the NPA, provided that:

1. The antenna deployment being replaced has undergone Section 106 review, unless either (a) such review was not required at the time that the antenna being replaced was installed, or (b) for deployments on towers, review is not required pursuant to Stipulation III above.

2. The facility is a replacement for an existing facility, and it does not exceed the greater of:

a. The size of the existing antenna/antenna enclosure and associated equipment that is being replaced; or,

b. The following limits for the antenna and its associated equipment:

i. The antenna, excluding the associated equipment, fits within an enclosure (or if the antenna is exposed, within an imaginary enclosure, *i.e.*, one that would be the correct size to contain the equipment) that is no more than three cubic feet in volume, with a cumulative limit of 6 cubic feet if there is more than one antenna/antenna enclosure on the structure; and,

ii. The wireless equipment associated with the antenna and any pre-existing antennas and associated equipment on the structure, but excluding cable runs for the connection of power and other services, are cumulatively no more than 21 cubic feet in volume; and,

3. The replacement of the facilities (including antenna(s) and associated equipment as defined in Stipulation I.A.) does not damage historic materials and permits removal of such facilities without damaging historic materials; and,

4. The depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms). Up to four lightning grounding rods of no more than three-quarters of an inch in diameter may be installed per project, regardless of the extent of previous ground disturbance.

B. A small antenna mounted inside a building or non-tower structure and subject to the provisions of this Stipulation VIII is to be installed in a way that does not damage historic materials and permits removal of such facilities without damaging historic materials.

IX. RESERVATION OF RIGHTS

Neither execution of this Agreement, nor implementation of or compliance with any term herein shall operate in any way as a waiver by any party hereto, or by any person or entity complying herewith or affected hereby, of a right to assert in any court of law any claim, argument or defense regarding the validity or interpretation of any provision of the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*) or its implementing regulations contained in 36 CFR part 800.

X. MONITORING

A. FCC licensees shall retain records of the placement of all licensed antennas, including collocations subject to this Nationwide Programmatic Agreement, consistent with FCC rules and procedures.

B. The Council will forward to the FCC and the relevant SHPO any written objections it receives from members of the public regarding a collocation activity or general compliance with the provisions of this Nationwide Programmatic Agreement within thirty (30) days following receipt of the written objection. The FCC will forward a copy of the written objection to the appropriate licensee or tower owner.

C. Any member of the public may notify the FCC of concerns it has regarding the application of this Programmatic Agreement within a State or with regard to the review of individual undertakings covered or excluded under the terms of this Agreement. Comments shall be directed to the FCC's Federal Preservation Officer. The FCC will consider public comments and, following consultation with the SHPO, potentially affected Tribes, or the Council, as appropriate, take appropriate actions. The FCC shall notify the objector of the outcome of its actions.

XI. AMENDMENTS

If any signatory to this Nationwide Collocation Programmatic Agreement believes that this Agreement should be amended, that signatory may at any time propose amendments, whereupon the signatories will consult to consider the amendments. This agreement may be amended only upon the written concurrence of the signatories.

XII. TERMINATION

A. If the FCC determines, or if NCSHPO determines on behalf of its members, that it or they cannot implement the terms of this Nationwide Collocation Programmatic Agreement, or if the FCC, NCSHPO or the Council determines that the Programmatic Agreement is not being properly implemented or that the spirit of Section 106 is not being met by the parties to this Programmatic Agreement, the FCC, NCSHPO or the Council may propose to the other signatories that the Programmatic Agreement be terminated.

B. The party proposing to terminate the Programmatic Agreement shall notify the other signatories in writing, explaining the reasons for the proposed termination and the particulars of the asserted improper implementation. Such party also shall afford the other signatories a reasonable period of time of no less than thirty (30) days to consult and remedy the problems resulting in improper implementation. Upon receipt of such notice, the parties shall consult with each other and notify and consult with other entities that either are involved in such implementation or would be substantially affected by termination of this Agreement, and seek alternatives to termination. Should the consultation fail to produce within the original remedy period or any extension a reasonable alternative to termination, a resolution of the stated problems, or convincing evidence of substantial implementation of this Agreement in accordance with its terms, this Programmatic Agreement shall be terminated thirty days after notice of termination is served on all parties and published in the FEDERAL REGISTER.

C. In the event that the Programmatic Agreement is terminated, the FCC shall advise its licensees and tower owner and management companies of the termination and of the need to comply with any applicable Section 106 requirements on a case-by-case basis for collocation activities.

XIII. ANNUAL MEETING OF THE SIGNATORIES

The signatories to this Nationwide Collocation Programmatic Agreement will meet annually on or about the anniversary of the effective date of the NPA to discuss the effectiveness of this Agreement and the NPA, including any issues related to improper implementation, and to discuss any potential amendments that would improve the effectiveness of this Agreement.

XIV. DURATION OF THE PROGRAMMATIC AGREEMENT

This Programmatic Agreement for collocation shall remain in force unless the Programmatic Agreement is terminated or superseded by a comprehensive Programmatic Agreement for wireless communications antennas.

Execution of this Nationwide Programmatic Agreement by the FCC, NCSHPO and the Council, and implementation of its terms, constitutes evidence that the FCC has afforded the Council an opportunity to comment on the collocation as described herein of antennas covered under the FCC's rules, and that the FCC has taken into account the effects of these collocations on historic properties in accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR part 800.

FEDERAL COMMUNICATIONS COMMISSION

_____

Date: _____

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

_____

Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

_____

Date: _____

[85 FR 51358, Aug. 20, 2020]

APPENDIX C TO PART 1—NATIONWIDE PROGRAMMATIC AGREEMENT REGARDING THE SECTION 106 NATIONAL HISTORIC PRESERVATION ACT REVIEW PROCESS

NATIONWIDE PROGRAMMATIC AGREEMENT FOR REVIEW OF EFFECTS ON HISTORIC PROPERTIES FOR CERTAIN UNDERTAKINGS APPROVED BY THE FEDERAL COMMUNICATIONS COMMISSION

EXECUTED BY THE FEDERAL COMMUNICATIONS COMMISSION, THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

September 2004

Introduction

Whereas, Section 106 of the National Historic Preservation Act of 1966, as amended (''NHPA'') (codified at 16 U.S.C. 470f), requires federal agencies to take into account the effects of certain of their Undertakings on Historic Properties (see Section II, below), included in or eligible for inclusion in the National Register of Historic Places (''National Register''), and to afford the Advisory Council on Historic Preservation (''Council'') a reasonable opportunity to comment with regard to such Undertakings; and

Whereas, under the authority granted by Congress in the Communications Act of 1934, as amended (47 U.S.C. 151 *et seq.*), the Federal Communications Commission (''Commission'') establishes rules and procedures for the licensing of non-federal government communications services, and the registration of certain antenna structures in the United States and its Possessions and Territories; and

Whereas, Congress and the Commission have deregulated or streamlined the application process regarding the construction of individual Facilities in many of the Commission's licensed services; and

Whereas, under the framework established in the Commission's environmental rules, 47 CFR 1.1301–1.1319, Commission licensees and applicants for authorizations and antenna structure registrations are required to prepare, and the Commission is required to independently review and approve, a pre-construction Environmental Assessment (''EA'') in cases where a proposed tower or antenna may significantly affect the environment, including situations where a proposed tower or antenna may affect Historic Properties that are either listed in or eligible for listing in the National Register, including properties of religious and cultural importance to an Indian tribe or Native Hawaiian organization (''NHO'') that meet the National Register criteria; and

Whereas, the Council has adopted rules implementing Section 106 of the NHPA (codified at 36 CFR Part 800) and setting forth the process, called the ''Section 106 process,'' for complying with the NHPA; and

Whereas, pursuant to the Commission's rules and the terms of this Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (''Nationwide Agreement''), Applicants (*see* Section II.A.2) have been authorized, consistent with the terms of the memorandum from the Council to the Commission, titled ''Delegation of Authority for the Section 106 Review of Telecommunications Projects,'' dated September 21, 2000, to initiate, coordinate, and assist the Commission with compliance with many aspects of the Section 106 review process for their Facilities; and

Whereas, in August 2000, the Council established a Telecommunications Working Group (the ''Working Group'') to provide a forum for the Commission, the Council, the National Conference of State Historic Preservation Officers (''Conference''), individual State Historic Preservation Officers (''SHPOs''), Tribal Historic Preservation Officers (''THPOs''), other tribal representatives, communications industry representatives, and other interested members of the public to discuss improved Section 106 compliance and to develop methods of streamlining the Section 106 review process; and

Whereas, Section 214 of the NHPA (16 U.S.C. 470v) authorizes the Council to promulgate regulations implementing exclusions from Section 106 review, and Section 800.14(b) of the Council's regulations (36 CFR 800.14(b)) allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs, if they are consistent with the Council's regulations; and

Whereas, the Commission, the Council, and the Conference executed on March 16, 2001, the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (the ''Collocation Agreement''), in order to streamline review for the collocation of antennas on existing towers and other structures and thereby reduce the need for the construction of new towers (Attachment 1 to this Nationwide Agreement); and

Whereas, the Council, the Conference, and the Commission now agree it is desirable to further streamline and tailor the Section 106 review process for Facilities that are not excluded from Section 106 review under the Collocation Agreement while protecting Historic Properties that are either listed in or eligible for listing in the National Register; and

Whereas, the Working Group agrees that a nationwide programmatic agreement is a desirable and effective way to further streamline and tailor the Section 106 review process as it applies to Facilities; and

Whereas, this Nationwide Agreement will, upon its execution by the Council, the Conference, and the Commission, constitute a substitute for the Council's rules with respect to certain Commission Undertakings; and

Whereas, the Commission sought public comment on a draft of this Nationwide Agreement through a Notice of Proposed Rulemaking released on June 9, 2003;

Whereas, the Commission has actively sought and received participation and comment from Indian tribes and NHOs regarding this Nationwide Agreement; and

Whereas, the Commission has consulted with federally recognized Indian tribes regarding this Nationwide Agreement (*see* Report and Order, FCC 04–222, at ¶31); and

Whereas, this Nationwide Agreement provides for appropriate public notification and participation in connection with the Section 106 process; and

Whereas, Section 101(d)(6) of the NHPA provides that federal agencies ''shall consult with any Indian tribe or Native Hawaiian organization'' that attaches religious and cultural significance to properties of traditional religious and cultural importance that may be determined to be eligible for inclusion in the National Register and that might be affected by a federal undertaking (16 U.S.C. 470a(d)(6)); and

Whereas, the Commission has adopted a ''Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes'' dated June 23, 2000, pursuant to which the Commission: recognizes the unique legal relationship that exists between the federal government and Indian tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions; affirms the federal trust relationship with Indian tribes, and recognizes that this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian tribes; commits to working with Indian tribes on a government-to-government basis consistent with the principles of tribal self-governance; commits, in accordance with the federal government's trust responsibility, and to the extent practicable, to consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect tribal governments, their land and resources; strives to develop working relationships with tribal governments, and will endeavor to identify innovative mechanisms to facilitate tribal consultations in the Commission's regulatory processes; and endeavors to streamline its administrative process and procedures to remove undue burdens that its decisions and actions place on Indian tribes; and

Whereas, the Commission does not delegate under this Programmatic Agreement any portion of its responsibilities to Indian tribes and NHOs, including its obligation to consult under Section 101(d)(6) of the NHPA; and

Whereas, the terms of this Nationwide Agreement are consistent with and do not attempt to abrogate the rights of Indian tribes or NHOs to consult directly with the Commission regarding the construction of Facilities; and

Whereas, the execution and implementation of this Nationwide Agreement will not preclude Indian tribes or NHOs, SHPO/THPOs, local governments, or members of the public from filing complaints with the Commission or the Council regarding effects on Historic Properties from any Facility or any activity covered under the terms of the Nationwide Agreement; and

Whereas, Indian tribes and NHOs may request Council involvement in Section 106 cases that present issues of concern to Indian tribes or NHOs (*see* 36 CFR Part 800, Appendix A, Section (c)(4)); and

Whereas, the Commission, after consulting with federally recognized Indian tribes, has developed an electronic Tower Construction Notification System through which Indian tribes and NHOs may voluntarily identify the geographic areas in which Historic Properties to which they attach religious and cultural significance may be located, Applicants may ascertain which participating Indian tribes and NHOs have identified such an interest in the geographic area in which they propose to construct Facilities, and Applicants may voluntarily provide electronic notification of proposed Facilities construction for the Commission to forward to participating Indian tribes, NHOs, and SHPOs/THPOs; and

Whereas, the Council, the Conference and the Commission recognize that Applicants' use of qualified professionals experienced with the NHPA and Section 106 can streamline the review process and minimize potential delays; and

Whereas, the Commission has created a position and hired a cultural resources professional to assist with the Section 106 process; and

Whereas, upon execution of this Nationwide Agreement, the Council may still provide advisory comments to the Commission regarding the coordination of Section 106 reviews; notify the Commission of concerns raised by consulting parties and the public regarding an Undertaking; and participate in the resolution of adverse effects for complex, controversial, or other non-routine projects;

Now Therefore, in consideration of the above provisions and of the covenants and agreements contained herein, the Council,

the Conference and the Commission (the ''Parties'') agree as follows:

I. APPLICABILITY AND SCOPE OF THIS NATIONWIDE AGREEMENT

A. This Nationwide Agreement (1) Excludes from Section 106 review certain Undertakings involving the construction and modification of Facilities, and (2) streamlines and tailors the Section 106 review process for other Undertakings involving the construction and modification of Facilities. An illustrative list of Commission activities in relation to which Undertakings covered by this Agreement may occur is provided as Attachment 2 to this Agreement.

B. This Nationwide Agreement applies only to federal Undertakings as determined by the Commission (''Undertakings''). The Commission has sole authority to determine what activities undertaken by the Commission or its Applicants constitute Undertakings within the meaning of the NHPA. Nothing in this Agreement shall preclude the Commission from revisiting or affect the existing ability of any person to challenge any prior determination of what does or does not constitute an Undertaking. Maintenance and servicing of Towers, Antennas, and associated equipment are not deemed to be Undertakings subject to Section 106 review.

C. This Agreement does not apply to Antenna Collocations that are exempt from Section 106 review under the Collocation Agreement (*see* Attachment 1). Pursuant to the terms of the Collocation Agreement, such Collocations shall not be subject to the Section 106 review process and shall not be submitted to the SHPO/THPO for review. This Agreement does apply to collocations that are not exempt from Section 106 review under the Collocation Agreement.

D. This Agreement does not apply on ''tribal lands'' as defined under Section 800.16(x) of the Council's regulations, 36 CFR § 800.16(x) (''Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.''). This Nationwide Agreement, however, will apply on tribal lands should a tribe, pursuant to appropriate tribal procedures and upon reasonable notice to the Council, Commission, and appropriate SHPO/THPO, elect to adopt the provisions of this Nationwide Agreement. Where a tribe that has assumed SHPO functions pursuant to Section 101(d)(2) of the NHPA (16 U.S.C. 470(d)(2)) has agreed to application of this Nationwide Agreement on tribal lands, the term SHPO/THPO denotes the Tribal Historic Preservation Officer with respect to review of proposed Undertakings on those tribal lands. Where a tribe that has not assumed SHPO functions has agreed to application of this Nationwide Agreement on tribal lands, the tribe may notify the Commission of the tribe's intention to perform the duties of a SHPO/THPO, as defined in this Nationwide Agreement, for proposed Undertakings on its tribal lands, and in such instances the term SHPO/THPO denotes both the State Historic Preservation Officer and the tribe's authorized representative. In all other instances, the term SHPO/THPO denotes the State Historic Preservation Officer.

E. This Nationwide Agreement governs only review of Undertakings under Section 106 of the NHPA. Applicants completing the Section 106 review process under the terms of this Nationwide Agreement may not initiate construction without completing any environmental review that is otherwise required for effects other than historic preservation under the Commission's rules (*See* 47 CFR 1.1301–1.1319). Completion of the Section 106 review process under this Nationwide Agreement satisfies an Applicant's obligations under the Commission's rules with respect to Historic Properties, except for Undertakings that have been determined to have an adverse effect on Historic Properties and that therefore require preparation and filing of an Environmental Assessment (*See* 47 CFR 1.1307(a)(4)).

F. This Nationwide Agreement does not govern any Section 106 responsibilities that agencies other than the Commission may have with respect to those agencies' federal Undertakings.

II. DEFINITIONS

A. The following terms are used in this Nationwide Agreement as defined below:

1. Antenna. An apparatus designed for the purpose of emitting radio frequency (''RF'') radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a Tower, structure, or building as part of the original installation of the antenna. For most services, an Antenna will be mounted on or in, and is distinct from, a supporting structure such as a Tower, structure or building. However, in the case of AM broadcast stations, the entire Tower or group of Towers constitutes the Antenna for that station. For purposes of this Nationwide Agreement, the term Antenna does not include unintentional radiators, mobile stations, or devices authorized under Part 15 of the Commission's rules.

2. Applicant. A Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.

3. Area of Potential Effects (''APE''). The geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of Historic Properties, if any such properties exist.

4. Collocation. The mounting or installation of an Antenna on an existing Tower, building, or structure for the purpose of transmitting radio frequency signals for telecommunications or broadcast purposes.

5. Effect. An alteration to the characteristics of a Historic Property qualifying it for inclusion in or eligibility for the National Register.

6. Experimental Authorization. An authorization issued to conduct experimentation utilizing radio waves for gathering scientific or technical operation data directed toward the improvement or extension of an established service and not intended for reception and use by the general public. ''Experimental Authorization'' does not include an ''Experimental Broadcast Station'' authorized under Part 74 of the Commission's rules.

7. Facility. A Tower or an Antenna. The term Facility may also refer to a Tower and its associated Antenna(s).

8. Field Survey. A research strategy that utilizes one or more visits to the area where construction is proposed as a means of identifying Historic Properties.

9. Historic Property. Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or NHO that meet the National Register criteria.

10. National Register. The National Register of Historic Places, maintained by the Secretary of the Interior's office of the Keeper of the National Register.

11. SHPO/THPO Inventory. A set of records of previously gathered information, authorized by state or tribal law, on the absence, presence and significance of historic and archaeological resources within the state or tribal land.

12. Special Temporary Authorization. Authorization granted to a permittee or licensee to allow the operation of a station for a limited period at a specified variance from the terms of the station's permanent authorization or requirements of the Commission's rules applicable to the particular class or type of station.

13. Submission Packet. The document to be submitted initially to the SHPO/THPO to facilitate review of the Applicant's findings and any determinations with regard to the potential impact of the proposed Undertaking on Historic Properties in the APE. There are two Submission Packets: (a) The New Tower Submission Packet (FCC Form 620) (*See* Attachment 3) and (b) The Collocation Submission Packet (FCC Form 621) (*See* Attachment 4). Any documents required to be submitted along with a Form are part of the Submission Packet.

14. Tower. Any structure built for the sole or primary purpose of supporting Commission-licensed or authorized Antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein.

B. All other terms not defined above or elsewhere in this Nationwide Agreement shall have the same meaning as set forth in the Council's rules section on Definitions (36 CFR 800.16) or the Commission's rules (47 CFR Chapter I).

C. For the calculation of time periods under this Agreement, ''days'' mean ''calendar days.'' Any time period specified in the Agreement that ends on a weekend or a Federal or State holiday is extended until the close of the following business day.

D. Written communications include communications by e-mail or facsimile.

III. Undertakings Excluded From Section 106 Review

Undertakings that fall within the provisions listed in the following sections III.A. through III.F. are excluded from Section 106 review by the SHPO/THPO, the Commission, and the Council, and, accordingly, shall not be submitted to the SHPO/THPO for review. The determination that an exclusion applies to an Undertaking should be made by an authorized individual within the Applicant's organization, and Applicants should retain documentation of their determination that an exclusion applies. Concerns regarding the application of these exclusions from Section 106 review may be presented to and considered by the Commission pursuant to Section XI.

A. Enhancement of a tower and any associated excavation that does not involve a collocation and does not substantially increase the size of the existing tower, as defined in the Collocation Agreement. For towers constructed after March 16, 2001, this exclusion applies only if the tower has completed the Section 106 review process and any associated environmental reviews required by the Commission.

B. Construction of a replacement for an existing communications tower and any associated excavation that does not substantially increase the size of the existing tower under elements 1–3 of the definition as defined in the Collocation Agreement (*see* Attachment 1 to this Agreement, Stipulation 1.c.1–3) and that does not expand the boundaries of the leased or owned property surrounding the

tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site. For towers constructed after March 16, 2001, this exclusion applies only if the tower has completed the Section 106 review process and any associated environmental reviews required by the Commission's rules.

C. Construction of any temporary communications Tower, Antenna structure, or related Facility that involves no excavation or where all areas to be excavated will be located in areas described in Section VI.D.2.c.i below, including but not limited to the following:

1. A Tower or Antenna authorized by the Commission for a temporary period, such as any Facility authorized by a Commission grant of Special Temporary Authority (''STA'') or emergency authorization;

2. A cell on wheels (COW) transmission Facility;

3. A broadcast auxiliary services truck, TV pickup station, remote pickup broadcast station (e.g., electronic newsgathering vehicle) authorized under Part 74 or temporary fixed or transportable earth station in the fixed satellite service (e.g., satellite newsgathering vehicle) authorized under Part 25;

4. A temporary ballast mount Tower;

5. Any Facility authorized by a Commission grant of an experimental authorization.

For purposes of this Section III.C, the term ''temporary'' means ''for no more than twenty-four months duration except in the case of those Facilities associated with national security.''

D. Construction of a Facility less than 200 feet in overall height above ground level in an existing industrial park,[1] commercial strip mall,[2] or shopping center[3] that occupies a total land area of 100,000 square feet or more, provided that the industrial park, strip mall, or shopping center is not located within the boundaries of or within 500 feet of a Historic Property, as identified by the Applicant after a preliminary search of relevant records. Proposed Facilities within this exclusion must complete the process of participation of Indian tribes and NHOs pursuant to Section IV of this Agreement. If as a result of this process the Applicant or the Commission identifies a Historic Property that may be affected, the Applicant must complete the Section 106 review process pursuant to this Agreement notwithstanding the exclusion.

E. Construction of a Facility in or within 50 feet of the outer boundary of a right-of-way designated by a Federal, State, local, or Tribal government for the location of communications Towers or above-ground utility transmission or distribution lines and associated structures and equipment and in active use for such purposes, provided:

1. The proposed Facility would not constitute a substantial increase in size, under elements 1–3 of the definition in the Collocation Agreement, over existing structures located in the right-of-way within the vicinity of the proposed Facility, and;

2. The proposed Facility would not be located within the boundaries of a Historic Property, as identified by the Applicant after a preliminary search of relevant records.

Proposed Facilities within this exclusion must complete the process of participation of Indian tribes and NHOs pursuant to Section IV of this Agreement. If as a result of this process the Applicant or the Commission identifies a Historic Property that may be affected, the Applicant must complete the Section 106 review process pursuant to this Agreement notwithstanding the exclusion.

F. Construction of a Facility in any area previously designated by the SHPO/THPO at its discretion, following consultation with appropriate Indian tribes and NHOs, as having limited potential to affect Historic Properties. Such designation shall be documented by the SHPO/THPO and made available for public review.

IV. PARTICIPATION OF INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS IN UNDERTAKINGS OFF TRIBAL LANDS

A. The Commission recognizes its responsibility to carry out consultation with any Indian tribe or NHO that attaches religious and cultural significance to a Historic Property if the property may be affected by a Commission undertaking. This responsibility is founded in Sections 101(d)(6)(a-b) and 106 of the NHPA (16 U.S.C. 470a(d)(6)(a-b) and 470f), the regulations of the Council (36 CFR Part 800), the Commission's environmental regulations (47 CFR 1.1301–1.1319), and the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of

[1] A tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses, with consideration to transportation facilities, circulation, parking, utility needs, aesthetics and compatibility.

[2] A structure or grouping of structures, housing retail business, set back far enough from the street to permit parking spaces to be placed between the building entrances and the public right of way.

[3] A group of commercial establishments planned, constructed, and managed as a total entity, with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.

the United States, treaties, federal statutes, Executive orders, and numerous court decisions. This historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. (Commission Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes).

B. As an initial step to enable the Commission to fulfill its duty of consultation, Applicants shall use reasonable and good faith efforts to identify any Indian tribe or NHO that may attach religious and cultural significance to Historic Properties that may be affected by an Undertaking. Applicants should be aware that frequently, Historic Properties of religious and cultural significance to Indian tribes and NHOs are located on ancestral, aboriginal, or ceded lands of such tribes and organizations and Applicants should take this into account when complying with their responsibilities. Where an Indian tribe or NHO has voluntarily provided information to the Commission's Tower Construction Notification System regarding the geographic areas in which Historic Properties of religious and cultural significance to that Indian tribe or NHO may be located, reference to the Tower Construction Notification System shall constitute a reasonable and good faith effort at identification with respect to that Indian tribe or NHO. In addition, such reasonable and good faith efforts may include, but are not limited to, seeking relevant information from the relevant SHPO/THPO, Indian tribes, state agencies, the U.S. Bureau of Indian Affairs (''BIA''), or, where applicable, any federal agency with land holdings within the state (e.g., the U.S. Bureau of Land Management). Although these agencies can provide useful information in identifying potentially affected Indian tribes, contacting BIA, the SHPO or other federal and state agencies is not a substitute for seeking information directly from Indian tribes that may attach religious and cultural significance to a potentially affected Historic Property, as described below.

C. After the Applicant has identified Indian tribes and NHOs that may attach religious and cultural significance to potentially affected Historic Properties, the Commission has the responsibility, and the Commission imposes on the Applicant the obligation, to ensure that contact is made at an early stage in the planning process with such Indian tribes and NHOs in order to begin the process of ascertaining whether such Historic Properties may be affected. This initial contact shall be made by the Commission or the Applicant, in accordance with the wishes of the Indian tribe or NHO. This contact shall constitute only an initial effort to contact the Indian tribe or NHO, and does not in itself fully satisfy the Applicant's obligations or substitute for government-to-government consultation unless the Indian tribe or NHO affirmatively disclaims further interest or the Indian tribe or NHO has otherwise agreed that such contact is sufficient. Depending on the preference of the Indian tribe or NHO, the means of initial contact may include, without limitation:

1. Electronic notification through the Commission's Tower Construction Notification System;

2. Written communication from the Commission at the request of the Applicant;

3. Written, e-mail, or telephonic notification directly from the Applicant to the Indian tribe or NHO;

4. Any other means that the Indian Tribe or NHO has informed the Commission are acceptable, including through the adoption of best practices pursuant to Section IV.J, below; or

5. Any other means to which an Indian tribe or NHO and an Applicant have agreed pursuant to Section IV.K, below.

D. The Commission will use its best efforts to ascertain the preferences of each Indian tribe and NHO for initial contact, and to make these preferences available to Applicants in a readily accessible format. In addition, the Commission will use its best efforts to ascertain, and to make available to Applicants, any locations or types of construction projects, within the broad geographic areas in which Historic Properties of religious and cultural significance to an Indian tribe or NHO may be located, for which the Indian tribe or NHO does not expect notification. To the extent they are comfortable doing so, the Commission encourages Indian tribes and NHOs to accept the Tower Construction Notification System as an efficient and thorough means of making initial contact.

E. In the absence of any contrary indication of an Indian tribe's or NHO's preference, where an Applicant does not have a pre-existing relationship with an Indian tribe or NHO, initial contact with the Indian tribe or NHO shall be made through the Commission. Unless the Indian tribe or NHO has indicated otherwise, the Commission may make this initial contact through the Tower Construction Notification System. An Applicant that has a pre-existing relationship with an Indian tribe or NHO shall make initial contact in the manner that is customary to that relationship or in such other manner as may be accepted by the Indian tribe or NHO. An Applicant shall copy the Commission on any initial written or electronic direct contact with an Indian tribe or NHO, unless the Indian tribe or NHO has agreed through a best practices agreement or otherwise that such copying is not necessary.

F. Applicants' direct contacts with Indian tribes and NHOs, where accepted by the Indian tribe or NHO, shall be made in a sensitive manner that is consistent with the reasonable wishes of the Indian tribe or

NHO, where such wishes are known or can be reasonably ascertained. In general, unless an Indian tribe or NHO has provided guidance to the contrary, Applicants shall follow the following guidelines:

1. All communications with Indian tribes shall be respectful of tribal sovereignty;

2. Communications shall be directed to the appropriate representative designated or identified by the tribal government or other governing body;

3. Applicants shall provide all information reasonably necessary for the Indian tribe or NHO to evaluate whether Historic Properties of religious and cultural significance may be affected. The parties recognize that it may be neither feasible nor desirable to provide complete information about the project at the time of initial contact, particularly when initial contact is made early in the process. Unless the Indian tribe or NHO affirmatively disclaims interest, however, it shall be provided with complete information within the earliest reasonable time frame;

4. The Applicant must ensure that Indian tribes and NHOs have a reasonable opportunity to respond to all communications. Ordinarily, 30 days from the time the relevant tribal or NHO representative may reasonably be expected to have received an inquiry shall be considered a reasonable time. Should a tribe or NHO request additional time to respond, the Applicant shall afford additional time as reasonable under the circumstances. However, where initial contact is made automatically through the Tower Construction Notification System, and where an Indian tribe or NHO has stated that it is not interested in reviewing proposed construction of certain types or in certain locations, the Applicant need not await a response to contact regarding proposed construction meeting that description;

5. Applicants should not assume that failure to respond to a single communication establishes that an Indian tribe or NHO is not interested in participating, but should make a reasonable effort to follow up.

G. The purposes of communications between the Applicant and Indian tribes or NHOs are: (1) To ascertain whether Historic Properties of religious and cultural significance to the Indian tribe or NHO may be affected by the undertaking and consultation is therefore necessary, and (2) where possible, with the concurrence of the Indian tribe or NHO, to reach an agreement on the presence or absence of effects that may obviate the need for consultation. Accordingly, the Applicant shall promptly refer to the Commission any request from a federally recognized Indian tribe for government-to-government consultation. The Commission will then carry out government-to-government consultation with the Indian tribe. Applicants shall also seek guidance from the Commission in the event of any substantive or procedural disagreement with an Indian tribe or NHO, or if the Indian tribe or NHO does not respond to the Applicant's inquiries. Applicants are strongly advised to seek guidance from the Commission in cases of doubt.

H. If an Indian tribe or NHO indicates that a Historic Property of religious and cultural significance to it may be affected, the Applicant shall invite the commenting tribe or organization to become a consulting party. If the Indian tribe or NHO agrees to become a consulting party, it shall be afforded that status and shall be provided with all of the information, copies of submissions, and other prerogatives of a consulting party as provided for in 36 CFR 800.2.

I. Information regarding Historic Properties to which Indian tribes or NHOs attach religious and cultural significance may be highly confidential, private, and sensitive. If an Indian tribe or NHO requests confidentiality from the Applicant, the Applicant shall honor this request and shall, in turn, request confidential treatment of such materials or information in accordance with the Commission's rules and Section 304 of the NHPA (16 U.S.C. 470w–3(a)) in the event they are submitted to the Commission. The Commission shall provide such confidential treatment consistent with its rules and applicable federal laws. Although the Commission will strive to protect the privacy interests of all parties, the Commission cannot guarantee its own ability or the ability of Applicants to protect confidential, private, and sensitive information from disclosure under all circumstances.

J. In order to promote efficiency, minimize misunderstandings, and ensure that communications among the parties are made in accordance with each Indian tribe or NHO's reasonable preferences, the Commission will use its best efforts to arrive at agreements regarding best practices with Indian tribes and NHOs and their representatives. Such best practices may include means of making initial contacts with Indian tribes and NHOs as well as guidelines for subsequent discussions between Applicants and Indian tribes or NHOs in fulfillment of the requirements of the Section 106 process. To the extent possible, the Commission will strive to achieve consistency among best practice agreements with Indian tribes and NHOs. Where best practices exist, the Commission encourages Applicants to follow those best practices.

K. Nothing in this Section shall be construed to prohibit or limit Applicants and Indian tribes or NHOs from entering into or continuing pre-existing arrangements or agreements governing their contacts, provided such arrangements or agreements are otherwise consistent with federal law and no modification is made in the roles of other parties to the process under this Nationwide

Agreement without their consent. Documentation of such alternative arrangements or agreements should be filed with the Commission.

V. PUBLIC PARTICIPATION AND CONSULTING PARTIES

A. On or before the date an Applicant submits the appropriate Submission Packet to the SHPO/THPO, as prescribed by Section VII, below, the Applicant shall provide the local government that has primary land use jurisdiction over the site of the planned Undertaking with written notification of the planned Undertaking.

B. On or before the date an Applicant submits the appropriate Submission Packet to the SHPO/THPO, as prescribed by Section VII, below, the Applicant shall provide written notice to the public of the planned Undertaking. Such notice may be accomplished (1) through the public notification provisions of the relevant local zoning or local historic preservation process for the proposed Facility; or (2) by publication in a local newspaper of general circulation. In the alternative, an Applicant may use other appropriate means of providing public notice, including seeking the assistance of the local government.

C. The written notice to the local government and to the public shall include: (1) The location of the proposed Facility including its street address; (2) a description of the proposed Facility including its height and type of structure; (3) instruction on how to submit comments regarding potential effects on Historic Properties; and (4) the name, address, and telephone number of a contact person.

D. A SHPO/THPO may make available lists of other groups, including Indian tribes, NHOs and organizations of Indian tribes or NHOs, which should be provided notice for Undertakings to be located in particular areas.

E. If the Applicant receives a comment regarding potentially affected Historic Properties, the Applicant shall consider the comment and either include it in the initial submission to the SHPO/THPO, or, if the initial submission has already been made, immediately forward the comment to the SHPO/THPO for review. An Applicant need not submit to the SHPO/THPO any comment that does not substantially relate to potentially affected Historic Properties.

F. The relevant SHPO/THPO, Indian tribes and NHOs that attach religious and cultural significance to Historic Properties that may be affected, and the local government are entitled to be consulting parties in the Section 106 review of an Undertaking. The Council may enter the Section 106 process for a given Undertaking, on Commission invitation or on its own decision, in accordance with 36 CFR Part 800, Appendix A. An Applicant shall consider all written requests of other individuals and organizations to participate as consulting parties and determine which should be consulting parties. An Applicant is encouraged to grant such status to individuals or organizations with a demonstrated legal or economic interest in the Undertaking, or demonstrated expertise or standing as a representative of local or public interest in historic or cultural resources preservation. Any such individual or organization denied consulting party status may petition the Commission for review of such denial. Applicants may seek assistance from the Commission in identifying and involving consulting parties. All entities granted consulting party status shall be identified to the SHPO/THPO as part of the Submission Packet.

G. Consulting parties are entitled to: (1) Receive notices, copies of submission packets, correspondence and other documents provided to the SHPO/THPO in a Section 106 review; and (2) be provided an opportunity to have their views expressed and taken into account by the Applicant, the SHPO/THPO and, where appropriate, by the Commission.

VI. IDENTIFICATION, EVALUATION, AND ASSESSMENT OF EFFECTS

A. In preparing the Submission Packet for the SHPO/THPO and consulting parties pursuant to Section VII of this Nationwide Agreement and Attachments 3 and 4, the Applicant shall: (1) Define the area of potential effects (APE); (2) identify Historic Properties within the APE; (3) evaluate the historic significance of identified properties as appropriate; and (4) assess the effects of the Undertaking on Historic Properties. The standards and procedures described below shall be applied by the Applicant in preparing the Submission Packet, by the SHPO/THPO in reviewing the Submission Packet, and where appropriate, by the Commission in making findings.

B. Exclusion of Specific Geographic Areas from Review.

The SHPO/THPO, consistent with relevant State or tribal procedures, may specify geographic areas in which no review is required for direct effects on archeological resources or no review is required for visual effects.

C. Area of Potential Effects.

1. The term ''Area of Potential Effects'' is defined in Section II.A.3 of this Nationwide Agreement. For purposes of this Nationwide Agreement, the APE for direct effects and the APE for visual effects are further defined and are to be established as described below.

2. The APE for direct effects is limited to the area of potential ground disturbance and any property, or any portion thereof, that will be physically altered or destroyed by the Undertaking.

3. The APE for visual effects is the geographic area in which the Undertaking has the potential to introduce visual elements

that diminish or alter the setting, including the landscape, where the setting is a character-defining feature of a Historic Property that makes it eligible for listing on the National Register.

4. Unless otherwise established through consultation with the SHPO/THPO, the presumed APE for visual effects for construction of new Facilities is the area from which the Tower will be visible:

a. Within a half mile from the tower site if the proposed Tower is 200 feet or less in overall height;

b. Within ¾ of a mile from the tower site if the proposed Tower is more than 200 but no more than 400 feet in overall height; or

c. Wthin 1 ½ miles from the proposed tower site if the proposed Tower is more than 400 feet in overall height.

5. In the event the Applicant determines, or the SHPO/THPO recommends, that an alternative APE for visual effects is necessary, the Applicant and the SHPO/THPO may mutually agree to an alternative APE.

6. If the Applicant and the SHPO/THPO, after using good faith efforts, cannot reach an agreement on the use of an alternative APE, either the Applicant or the SHPO/THPO may submit the issue to the Commission for resolution. The Commission shall make its determination concerning an alternative APE within a reasonable time.

D. Identification and Evaluation of Historic Properties.

1. Identification and Evaluation of Historic Properties Within the APE for Visual Effects.

a. Except to identify Historic Properties of religious and cultural significance to Indian tribes and NHOs, Applicants shall identify Historic Properties within the APE for visual effects by reviewing the following records. Applicants are required to review such records only to the extent they are available at the offices of the SHPO/THPO or can be found in publicly available sources identified by the SHPO/THPO. With respect to these properties, Applicants are not required to undertake a Field Survey or other measures other than reviewing these records in order to identify Historic Properties:

i. Properties listed in the National Register;

ii. Properties formally determined eligible for listing by the Keeper of the National Register;

iii. Properties that the SHPO/THPO certifies are in the process of being nominated to the National Register;

iv. Properties previously determined eligible as part of a consensus determination of eligibility between the SHPO/THPO and a Federal Agency or local government representing the Department of Housing and Urban Development (HUD); and

v. Properties listed in the SHPO/THPO Inventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria, and that are identified accordingly in the SHPO/THPO Inventory.

b. At an early stage in the planning process and in accordance with Section IV of this Nationwide Agreement, the Commission or the Applicant, as appropriate, shall gather information from Indian tribes or NHOs identified pursuant to Section IV.B to assist in identifying Historic Properties of religious and cultural significance to them within the APE for visual effects. Such information gathering may include a Field Survey where appropriate.

c. Based on the sources listed above and public comment received pursuant to Section V of this Nationwide Agreement, the Applicant shall include in its Submission Packet a list of properties it has identified as apparent Historic Properties within the APE for visual effects.

i. During the review period described in Section VII.A, the SHPO/THPO may identify additional properties included in the SHPO/THPO Inventory and located within the APE that the SHPO/THPO considers eligible for listing on the National Register, and notify the Applicant pursuant to Section VII.A.4.

ii. The SHPO/THPO may also advise the Applicant that previously identified properties on the list no longer qualify for inclusion in the National Register.

d. Applicants are encouraged at their discretion to use the services of professionals who meet the Secretary of the Interior's Professional Qualification Standards when identifying Historic Properties within the APE for visual effects.

e. Applicants are not required to evaluate the historic significance of properties identified pursuant to Section VI.D.1.a., but may rely on the previous evaluation of these properties. Applicants may, at their discretion, evaluate whether such properties are no longer eligible for inclusion in the National Register and recommend to the SHPO/THPO their removal from consideration. Any such evaluation shall be performed by a professional who meets the Secretary of the Interior's Professional Qualification Standards.

2. Identification and Evaluation of Historic Properties Within the APE for Direct Effects.

a. In addition to the properties identified pursuant to Section VI.D.1, Applicants shall make a reasonable good faith effort to identify other above ground and archeological Historic Properties, including buildings, structures, and historic districts, that lie within the APE for direct effects. Such reasonable and good faith efforts may include a Field Survey where appropriate.

b. Identification and evaluation of Historic Properties within the APE for direct effects, including any finding that an archeological

Field Survey is not required, shall be undertaken by a professional who meets the Secretary of the Interior's Professional Qualification Standards. Identification and evaluation relating to archeological resources shall be performed by a professional who meets the Secretary of the Interior's Professional Qualification Standards in archeology.

c. Except as provided below, the Applicant need not undertake a Field Survey for archeological resources where:

i. the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least 2 feet as documented in the Applicant's siting analysis; or

ii. geomorphological evidence indicates that cultural resource-bearing soils do not occur within the project area or may occur but at depths that exceed 2 feet below the proposed construction depth.

d. At an early stage in the planning process and in accordance with Section IV of this Nationwide Agreement, the Commission or the Applicant, as appropriate, shall gather information from Indian tribes or NHOs identified pursuant to Section IV.B to assist in identifying archeological Historic Properties of religious and cultural significance to them within the APE for direct effects. If an Indian tribe or NHO provides evidence that supports a high probability of the presence of intact archeological Historic Properties within the APE for direct effects, the Applicant shall conduct an archeological Field Survey notwithstanding Section VI.D.2.c.

e. Where the Applicant pursuant to Sections VI.D.2.c and VI.D.2.d finds that no archeological Field Survey is necessary, it shall include in its Submission Packet a report substantiating this finding. During the review period described in Section VII.A, the SHPO/THPO may, based on evidence that supports a high probability of the presence of intact archeological Historic Properties within the APE for direct effects, notify the Applicant that the Submission Packet is inadequate without an archeological Field Survey pursuant to Section VII.A.4.

f. The Applicant shall conduct an archeological Field Survey within the APE for direct effects if neither of the conditions in Section VI.D.2.c applies, or if required pursuant to Section VI.D.2.d or e. The Field Survey shall be conducted in consul-tation with the SHPO/THPO and consulting Indian tribes or NHOs.

g. The Applicant, in consultation with the SHPO/THPO and appropriate Indian tribes or NHOs, shall apply the National Register criteria (36 CFR Part 63) to properties identified within the APE for direct effects that have not previously been evaluated for National Register eligibility, with the exception of those identified pursuant to Section VI.D.1.a.

3. Dispute Resolution. Where there is a disagreement regarding the identification or eligibility of a property, and after attempting in good faith to resolve the issue the Applicant and the SHPO/THPO continue to disagree, the Applicant or the SHPO/THPO may submit the issue to the Commission. The Commission shall handle such submissions in accordance with 36 CFR 800.4(c)(2).

E. Assessment of Effects

1. Applicants shall assess effects of the Undertaking on Historic Properties using the Criteria of Adverse Effect (36 CFR 800.5(a)(1)).

2. In determining whether Historic Properties in the APE may be adversely affected by the Undertaking, the Applicant should consider factors such as the topography, vegetation, known presence of Historic Properties, and existing land use.

3. An Undertaking will have a visual adverse effect on a Historic Property if the visual effect from the Facility will noticeably diminish the integrity of one or more of the characteristics qualifying the property for inclusion in or eligibility for the National Register. Construction of a Facility will not cause a visual adverse effect except where visual setting or visual elements are character-defining features of eligibility of a Historic Property located within the APE.

4. For collocations not excluded from review by the Collocation Agreement or this Agreement, the assessment of effects will consider only effects from the newly added or modified Facilities and not effects from the existing Tower or Antenna.

5. Assessment pursuant to this Agreement shall be performed by professionals who meet the Secretary of the Interior's Professional Qualification Standards.

VII. PROCEDURES

A. Use of the Submission Packet

1. For each Undertaking within the scope of this Nationwide Agreement, the Applicant shall initially determine whether there are no Historic Properties affected, no adverse effect on Historic Properties, or an adverse effect on Historic Properties. The Applicant shall prepare a Submission Packet and submit it to the SHPO/THPO and to all consulting parties, including any Indian tribe or NHO that is participating as a consulting party.

2. The SHPO/THPO shall have 30 days from receipt of the requisite documentation to review the Submission Packet.

3. If the SHPO/THPO receives a comment or objection, in accordance with Section V.E, more than 25 but less than 31 days following its receipt of the initial submission, the SHPO/THPO shall have five calendar days to consider such comment or objection before

the Section 106 process is complete or the matter may be submitted to the Commission.

4. If the SHPO/THPO determines the Applicant's Submission Packet is inadequate, or if the SHPO/THPO identifies additional Historic Properties within the APE, the SHPO/THPO will immediately notify the Applicant and describe any deficiencies. The SHPO/THPO may close its file without prejudice if the Applicant does not resubmit an amended Submission Packet within 60 days following the Applicant's receipt of the returned Submission Packet. Resubmission of the Submission Packet to the SHPO/THPO commences a new 30 day period for review.

B. Determinations of No Historic Properties Affected

1. If the SHPO/THPO concurs in writing with the Applicant's determination of no Historic Properties affected, it is deemed that no Historic Properties exist within the APE or the Undertaking will have no effect on any Historic Properties located within the APE. The Section 106 process is then complete, and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.

2. If the SHPO/THPO does not provide written notice to the Applicant that it agrees or disagrees with the Applicant's determination of no Historic Properties affected within 30 days following receipt of a complete Submission Packet, it is deemed that no Historic Properties exist within the APE or the Undertaking will have no effect on Historic Properties. The Section 106 process is then complete and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.

3. If the SHPO/THPO provides written notice within 30 days following receipt of the Submission Packet that it disagrees with the Applicant's determination of no Historic Properties affected, it should provide a short and concise explanation of exactly how the criteria of eligibility and/or criteria of Adverse Effect would apply. The Applicant and the SHPO/THPO should engage in further discussions and make a reasonable and good faith effort to resolve their disagreement.

4. If the SHPO/THPO and Applicant do not resolve their disagreement, the Applicant may at any time choose to submit the matter, together with all relevant documents, to the Commission, advising the SHPO/THPO accordingly.

C. Determinations of No Adverse Effect

1. If the SHPO/THPO concurs in writing with the Applicant's determination of no adverse effect, the Facility is deemed to have no adverse effect on Historic Properties. The Section 106 process is then complete and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.

2. If the SHPO/THPO does not provide written notice to the Applicant that it agrees or disagrees with the Applicant's determination of no adverse effect within thirty days following its receipt of a complete Submission Packet, the SHPO/THPO is presumed to have concurred with the Applicant's determination. The Applicant shall, pursuant to procedures to be promulgated by the Commission, forward a copy of its Submission Packet to the Commission, together with all correspondence with the SHPO/THPO and any comments or objections received from the public, and advise the SHPO/THPO accordingly. The Section 106 process shall then be complete unless the Commission notifies the Applicant otherwise within 15 days after the Commission receives the Submission Packet and accompanying material electronically or 25 days after the Commission receives this material by other means.

3. If the SHPO/THPO provides written notice within 30 days following receipt of the Submission Packet that it disagrees with the Applicant's determination of no adverse effect, it should provide a short and concise explanation of the Historic Properties it believes to be affected and exactly how the criteria of Adverse Effect would apply. The Applicant and the SHPO/THPO should engage in further discussions and make a reasonable and good faith effort to resolve their disagreement.

4. If the SHPO/THPO and Applicant do not resolve their dispute, the Applicant may at any time choose to submit the matter, together with all relevant documents, to the Commission, advising the SHPO/THPO accordingly.

5. Whenever the Applicant or the Commission concludes, or a SHPO/THPO advises, that a proposed project will have an adverse effect on a Historic Property, after applying the criteria of Adverse Effect, the Applicant and the SHPO/THPO are encouraged to investigate measures that would avoid the adverse effect and permit a conditional ''No Adverse Effect'' determination.

6. If the Applicant and SHPO/THPO mutually agree upon conditions that will result in no adverse effect, the Applicant shall advise the SHPO/THPO in writing that it will comply with the conditions. The Applicant can then make a determination of no adverse effect subject to its implementation of the conditions. The Undertaking is then deemed conditionally to have no adverse effect on Historic Properties, and the Applicant may proceed with the project subject to compliance with those conditions. Where the Commission has previously been involved in the matter, the Applicant shall notify the Commission of this resolution.

D. Determinations of Adverse Effect

1. If the Applicant determines at any stage in the process that an Undertaking would have an adverse effect on Historic Properties within the APE(s), or if the Commission so finds, the Applicant shall submit to the SHPO/THPO a plan designed to avoid, minimize, or mitigate the adverse effect.

2. The Applicant shall forward a copy of its submission with its mitigation plan and the entire record to the Council and the Commission. Within fifteen days following receipt of the Applicant's submission, the Council shall indicate whether it intends to participate in the negotiation of a Memorandum of Agreement by notifying both the Applicant and the Commission.

3. Where the Undertaking would have an adverse effect on a National Historic Landmark, the Commission shall request the Council to participate in consultation and shall invite participation by the Secretary of the Interior.

4. The Applicant, SHPO/THPO, and consulting parties shall negotiate a Memorandum of Agreement that shall be sent to the Commission for review and execution.

5. If the parties are unable to agree upon mitigation measures, they shall submit the matter to the Commission, which shall coordinate additional actions in accordance with the Council's rules, including 36 CFR 800.6(b)(1)(v) and 800.7.

E. Retention of Information

The SHPO/THPO shall, subject to applicable state or tribal laws and regulations, and in accordance with its rules and procedures governing historic property records, retain the information in the Submission Packet pertaining to the location and National Register eligibility of Historic Properties and make such information available to Federal agencies and Applicants in other Section 106 reviews, where disclosure is not prevented by the confidentiality standards in 36 CFR 800.11(c).

F. Removal of Obsolete Towers

Applicants that construct new Towers under the terms of this Nationwide Agreement adjacent to or within the boundaries of a Historic Property are encouraged to disassemble such Towers should they become obsolete or remain vacant for a year or more.

VIII. EMERGENCY SITUATIONS

Unless the Commission deems it necessary to issue an emergency authorization in accordance with its rules, or the Undertaking is otherwise excluded from Section 106 review pursuant to the Collocation Agreement or Section III of this Agreement, the procedures in this Agreement shall apply.

IX. INADVERTENT OR POST-REVIEW DISCOVERIES

A. In the event that an Applicant discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by an Undertaking, the Applicant shall promptly notify the Commission, the SHPO/THPO and any potentially affected Indian tribe or NHO, and within a reasonable time shall submit to the Commission, the SHPO/THPO and any potentially affected Indian tribe or NHO, a written report evaluating the property's eligibility for inclusion in the National Register. The Applicant shall seek the input of any potentially affected Indian tribe or NHO in preparing this report. If found during construction, construction must cease until evaluation has been completed.

B. If the Applicant and SHPO/THPO concur that the discovered resource is eligible for listing in the National Register, the Applicant will consult with the SHPO/THPO, and Indian tribes or NHOs as appropriate, to evaluate measures that will avoid, minimize, or mitigate adverse effects. Upon agreement regarding such measures, the Applicant shall implement them and notify the Commission of its action.

C. If the Applicant and SHPO/THPO cannot reach agreement regarding the eligibility of a property, the matter will be referred to the Commission for review in accordance with Section VI.D.3. If the Applicant and the SHPO/THPO cannot reach agreement on measures to avoid, minimize, or mitigate adverse effects, the matter shall be referred to the Commission for appropriate action.

D. If the Applicant discovers any human or burial remains during implementation of an Undertaking, the Applicant shall cease work immediately, notify the SHPO/THPO and Commission, and adhere to applicable State and Federal laws regarding the treatment of human or burial remains.

X. CONSTRUCTION PRIOR TO COMPLIANCE WITH SECTION 106

A. The terms of Section 110(k) of the National Historic Preservation Act (16 U.S.C. 470h–2(k)) (''Section 110(k)'') apply to Undertakings covered by this Agreement. Any SHPO/THPO, potentially affected Indian tribe or NHO, the Council, or a member of the public may submit a complaint to the Commission alleging that a facility has been constructed or partially constructed after the effective date of this Agreement in violation of Section 110(k). Any such complaint must be in writing and supported by substantial evidence specifically describing how Section 110(k) has been violated. Upon receipt of such complaint the Commission will assume responsibility for investigating the applicability of Section 110(k) in accordance with the provisions herein.

B. If upon its initial review, the Commission concludes that a complaint on its face demonstrates a probable violation of Section 110(k), the Commission will immediately notify and provide the relevant Applicant with copies of the Complaint and order that all construction of a new tower or installation of any new collocations immediately cease and remain suspended pending the Commission's resolution of the complaint.

C. Within 15 days of receipt, the Commission will review the complaint and take appropriate action, which the Commission may determine, and which may include the following:

1. Dismiss the complaint without further action if the complaint does not establish a probable violation of Section 110(k) even if the allegations are taken as true;

2. Provide the Applicant with a copy of the complaint and request a written response within a reasonable time;

3. Request from the Applicant a background report which documents the history and chronology of the planning and construction of the Facility;

4. Request from the Applicant a summary of the steps taken to comply with the requirements of Section 106 as set forth in this Nationwide Agreement, particularly the application of the Criteria of Adverse Effect;

5. Request from the Applicant copies of any documents regarding the planning or construction of the Facility, including correspondence, memoranda, and agreements;

6. If the Facility was constructed prior to full compliance with the requirements of Section 106, request from the Applicant an explanation for such failure, and possible measures that can be taken to mitigate any resulting adverse effects on Historic Properties.

D. If the Commission concludes that there is a probable violation of Section 110(k) (*i.e.*, that ''with intent to avoid the requirements of Section 106, [an Applicant] has intentionally significantly adversely affected a Historic Property''), the Commission shall notify the Applicant and forward a copy of the documentation set forth in Section X.C. to the Council and, as appropriate, the SHPO/THPO and other consulting parties, along with the Commission's opinion regarding the probable violation of Section 110(k). The Commission will consider the views of the consulting parties in determining a resolution, which may include negotiating a Memorandum of Agreement (MOA) that will resolve any adverse effects. The Commission, SHPO/THPO, Council, and Applicant shall sign the MOA to evidence acceptance of the mitigation plan and conclusion of the Section 106 review process.

E. Nothing in Section X or any other provision of this Agreement shall preclude the Commission from continuing or instituting enforcement proceedings under the Communications Act and its rules against an Applicant that has constructed a Facility prior to completing required review under this Agreement. Sanctions for violations of the Commission's rules may include any sanctions allowed under the Communications Act and the Commission's rules.

F. The Commission shall provide copies of all concluding reports or orders for all Section 110(k) investigations conducted by the Commission to the original complainant, the Applicant, the relevant local government, and other consulting parties.

G. Facilities that are excluded from Section 106 review pursuant to the Collocation Agreement or Section III of this Agreement are not subject to review under this provision. Any parties who allege that such Facilities have violated Section 110(k) should notify the Commission in accordance with the provisions of Section XI, Public Comments and Objections.

XI. Public Comments and Objections

Any member of the public may notify the Commission of concerns it has regarding the application of this Nationwide Agreement within a State or with regard to the review of individual Undertakings covered or excluded under the terms of this Agreement. Comments related to telecommunications activities shall be directed to the Wireless Telecommunications Bureau and those related to broadcast facilities to the Media Bureau. The Commission will consider public comments and following consultation with the SHPO/THPO, potentially affected Indian tribes and NHOs, or Council, where appropriate, take appropriate actions. The Commission shall notify the objector of the outcome of its actions.

XII. Amendments

The signatories may propose modifications or other amendments to this Nationwide Agreement. Any amendment to this Agreement shall be subject to appropriate public notice and comment and shall be signed by the Commission, the Council, and the Conference.

XIII. Termination

A. Any signatory to this Nationwide Agreement may request termination by written notice to the other parties. Within sixty (60) days following receipt of a written request for termination from a signatory, all other signatories shall discuss the basis for the termination request and seek agreement on amendments or other actions that would avoid termination.

B. In the event that this Agreement is terminated, the Commission and all Applicants shall comply with the requirements of 36 CFR Part 800.

XIV. ANNUAL REVIEW

The signatories to this Nationwide Agreement will meet annually on or about the anniversary of the effective date of the Agreement to discuss the effectiveness of this Agreement, including any issues related to improper implementation, and to discuss any potential amendments that would improve the effectiveness of this Agreement.

XV. RESERVATION OF RIGHTS

Neither execution of this Agreement, nor implementation of or compliance with any term herein, shall operate in any way as a waiver by any party hereto, or by any person or entity complying herewith or affected hereby, of a right to assert in any court of law any claim, argument or defense regarding the validity or interpretation of any provision of the NHPA or its implementing regulations contained in 36 CFR Part 800.

XVI. SEVERABILITY

If any section, subsection, paragraph, sentence, clause or phrase in this Agreement is, for any reason, held to be unconstitutional or invalid or ineffective, such decision shall not affect the validity or effectiveness of the remaining portions of this Agreement.

In witness whereof, the Parties have caused this Agreement to be executed by their respective authorized officers as of the day and year first written above.

Federal Communications Commission

_____

Chairman

Date _____

Advisory Council on Historic Preservation

_____

Chairman

Date _____

National Conference of State Historic Preservation Officers

_____

Date _____

[70 FR 580, Jan. 4, 2005]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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