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SUBPART A -- ORGANIZATION

0.1 - 0.5(b)

GENERAL

§0.1 The Commission. The Federal Communications Commission is composed of 7 members, who are appointed by the President subject to confirmation of the Senate. Normally, one Commissioner is appointed or reappointed each year, for a term of 7 years/

§0.3 The Chairman. (a) One of the members of the Commission is designated by the President to serve as Chairman, or chief executive officer, of the Commission. As Chairman, he has the following duties and responsibilities:

- (1) To preside at all meetings and sessions of the Commission
- (2) To represent the Commission in all matters relating to legislation and legislative reports; however, any other Commissioner may present his own or minority views or supplemental reports.
- (3) To represent the Commission in all matters requiring conferences or communications with other governmental agencies, departments or officers.
- (4) To coordinate and organize the work of the Commission in such a manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission.

(b) The Commission will, in the case of a vacancy in the office of the Chairman of the Commission, or in the absence of the Chairman to serve, temporarily designate one of its members to act as Chairman until the cause or circumstance requiring such designation has been eliminated or corrected.

§0.4 Standing Committees of Commissioners. There are 3 standing committees of Commissioners; the Telegraph Committee, Telephone Committee, and the Subscription Television Committee, each composed of 3 Commissioners. These committees are delegated authority to act and report on certain telegraph, telephone and subscription television matters from time to time.

§0.5 General description of Commission organization and operations. (a) Principal staff Units. The Commission is assisted in the performance of its staff, which is divided into the following principal units.

- (1) Office of Managing Director.
- (2) Office of Science and Technology.
- (3) Office of General Counsel.
- (4) Office of Plans and Policy.
- (5) Mass Media Bureau.
- (6) Common Carrier Bureau.
- (7) Private Radio Bureau.
- (8) Field Operations Bureau.
- (9) Office of Administrative Law Judges.
- (10) Review Board.
- (11) Network inquiry special staff.
- (12) Office of Public Affairs.
- (13) Office of Congressional and Public Affairs.
- (14) Network Inquiry Special Staff.

(b) Staff responsibilities and functions. The organization and functions of these major staff units are described in detail in §§0.11-0.171. The defense and emergency preparedness functions of the Commission are set forth separately, beginning at 0.181. For a complete description of staff functions, reference should be made to these provisions. (See also the U.S. Government Organization Manual, which contains a chart showing the Commission's organization, the names of the members and a chart showing the Commission's organization, the names of the members and principal staff officers of the Commission, and other information concerning the Commission). So that the public may more readily inform itself concerning the operations of the Commission as a whole, concerning the staff about the officials who exercise responsibility over matters in which they are interested and relationship between staff units, a brief overall description of functions shall be set forth here.

(1) The Executive Director. The Executive Director is directly responsible to the Commission, works under the supervision of the Chairman, and assists him in carrying out the Commission's organizational and administrative responsibilities. His principal role is to see that other staff units work together and promptly dispose of the matters for which they are responsible. He is directly responsible for internal administrative matters and supervises implementation of the Public Information Act of 1966.

(2) The Chief Scientist and the General Counsel. Though primary responsibility in most established areas of regulation is lodged in other staff units, the Chief Scientist and the General Counsel are responsible for advising the Commission concerning any engineering or legal matter involved in the making and implementation of policy or in the decision of cases. For example, while policies relating solely to broadcasting are primarily the responsibility of the Broadcast Bureau, and the preparation of Commission opinions in hearing cases is primarily the responsibility of the Office of Opinions and Review, the Chief Scientist and the General Counsel may be called upon for advice and assistance in either area. The Chief Scientist and the General Counsel, in addition, exercise primary responsibility in areas of regulation which transcend the responsibilities of a single bureau. Thus, for example, the General Counsel is primarily responsible for the Rules of Practice and Procedure, Part 1 of this chapter, and the Chief Scientist is primarily responsible for frequency allocation and for other areas of regulation under Pars 2, 5, and 15. The General Counsel also represents the Commission in litigation in the courts and coordinates the preparation of the Commission's legislative program. Both the Chief Scientist and the General Counsel exercise responsibility in matters pertaining to International communications.

(3) The Chief of Plans and Policy. The Chief of Plans and Policy is designated by the Commission as a staff officer directly responsible to the Commission under the supervision of the Chairman. His principal role is to advise, assist, and make recommendations to the Commission with respect to the development and implementation of communications policies in all areas of Commission authority and responsibility. He is also responsible for coordinating policy research and development activities within the Commission, and with other governmental agencies.

(4) The Operating Bureaus. The principal work load operations of the Commission are conducted by the five operating bureaus.

(i) Four of these bureaus -- the Broadcast Bureau, Common Carrier Bureau, Safety and Special Radio Services Bureau, and Cable Television Bureau -- exercise primary responsibility in the four principal areas of regulation into which the Commission has divided its responsibilities. The Broadcast Bureau, as its name indicates, is responsible for the regulation of broadcast stations (see Part 73 of this chapter) and related facilities (see Part 74). The Common Carrier Bureau is responsible for the regulation of communications common carriers whether carriage involves the use of wire or radio facilities (see Parts 21-67). The Safety and Special Radio Services Bureau is responsible for the regulation of all other radio stations with minor exceptions (e.g., experimental stations licensed under Part 5). These include amateur stations and numerous other categories of stations engaged in communication for safety, commercial or personal purposes (see Parts 81-99). The Cable Television Bureau is responsible for the regulation of cable television systems and cable television relay stations (see Parts 76 and 78 of this chapter). The licensing of related microwave radio facilities is coordinated with the Cable Television Bureau by the Common Carrier Bureau and the Safety and Special

Radio Services Bureau. Within its area of responsibility, each of these bureaus is responsible for developing and implementing a regulatory program; for processing applications for radio licenses or other filings; for the consideration of complaints and the conduct of investigations; for participation in Commission hearing proceedings as appropriate; and for the performance of each other functions as may be related to its area of responsibility.

(ii) The fourth operating bureau: The Field Operations Bureau-- maintains field offices and monitoring stations throughout the United States. It is responsible for detecting violations of regulations pertaining to the use of radio and, in this connection, monitors radio transmissions, periodically inspects stations, and investigates complaints of radio frequency interference. It issues violation notices to the station in question, thereby affording it an opportunity to take corrective measures. If formal enforcement action is appropriate, the proceedings are conducted by the staff unit which exercises primary responsibility over the station in question--usually one of the other operating bureaus. The Field Operations Bureau, in addition, exercises responsibility over commercial radio operator matters (see Part 13 of this chapter), antenna structures (see Part 17), and the use of radio for purposes other than communication (see Part 18). It also conducts amateur operator examinations.

(5) Staff Units Which Exercise Responsibility for the Decision of Hearing Cases. The Office of Administrative Law Judges, the Review Board, and the Office of Opinions and Review exercise responsibility for the decision of hearing cases. The Administrative Law Judges preside over hearing cases and issue initial decisions. In most cases, initial decisions are subject to review by the Review Board, which is a permanent body composed of three or more senior Commission employees. Initial decisions may also be reviewed by one or more Commissioners designated by the Commission. In such cases, the Board or designated Commissioner(s) issues a final decision, which is subject to possible review by the Commission. In other cases, the initial decision is reviewed directly by the Commission en banc. The Office of Opinions and Review assists and advises the Commission, and any Commissioner(s) designated to review an initial decision in the decision of cases which come before them.

(6) Network inquiry special staff. The network inquiry special staff has primary responsibility for the conduct of a special inquiry relating to commercial television network practices and the ability of station licensees to serve the public interest, and related policy issues.

(7) Office of Congressional and Public Affairs. The Office of Congressional and Public Affairs has primary responsibility for the Commission's News Media, Consumer Assistance and Small Business, and Legislative Affairs programs. The major purpose of these programs is to inform the public of the Commission's regulatory requirements, to facilitate public participation in the Commission's decisionmaking processes, to appraise the public of Commission policies promoting minority participation in telecommunications and to implement the Commission's legislative programs in the telecommunications industry.

(c) Delegation of authority to the staff. Pursuant to Section 5(d) of the Communications Act, the Commission has delegated authority to its staff to act on matters which are minor or routine or settled in nature and those in which immediate action may be necessary. See Subpart B of this Part. Actions taken under delegated authority are subject to review by the Commission, on its own motion or on an application for review filed by a person aggrieved by the action. Except for the possibility of review, actions taken under delegated authority have the same force and effect as actions taken by the Commission. The delegation of authority to a staff officer, however, does not mean that he will exercise that authority in all matters subject to the delegation. In non-hearing matters, the staff is at liberty to refer any matters at any stage to the Commission for action, upon concluding that it involves matters warranting the Commission's consideration, and the Commission may instruct the staff to do so. In like manner, in hearing cases, pursuant to 0.361 (b) and (c), the Commission may direct that matters pending before the Review Board be certified to the Commission for decision, and the Board itself may certify such matters to the Commission, with a request that they be acted upon by the Commission.

(d) Commission action. Matters requiring Commission action, or warranting its consideration, are dealt with by the Commission at regular weekly meetings, or at special meetings called to consider a particular matter. Meetings are normally held at the principal offices of the Commission in the District of Columbia, but may be held elsewhere in the

United States. In appropriate circumstances, Commission action may be taken between meetings "by circulation," which involves the submission of a document to each of the Commissioners for his approval.

§0.6 Executive Advisory Council. The Executive Advisory Council provides a forum for the interchange of information and ideas among the Commission's principal staff components. The Council coordinates Commission programs and activities; analyzes problems and issues of concern to the members of the Council; and develops recommendations for action by the Chairman and the Commission. The membership is composed of the head of each principal staff unit in the Commission.

OFFICE OF THE EXECUTIVE DIRECTOR

0.11 Functions of the office. The Managing Director is appointed by the Chairman with the approval of the Commission. Under the supervision and direction of the Chairman, the Managing Director shall serve as the Commission's chief operating and executive official with the following duties and responsibilities:

(a) Provide managerial leadership to and exercise supervision and direction over the Commission's Bureaus and Offices with respect to management and administrative matters but not substantive regulatory matters such as regulatory policy and rule making, authorization of service, administration of sanctions, and adjudication.

(b) Formulate and administer all management and administrative policies, programs, and directives for the Commission consistent with authority delegated by the Commission and the Chairman and recommend to the Chairman and the Commission major changes in such policies and programs.

(c) Assist the Chairman in carrying out the administrative and executive responsibilities delegated to the Chairman as the administrative head of the agency.

(d) Advise the Chairman and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest. Assess the management, administrative, and resource implications of any proposed action or decision to be taken by the Commission or by a Bureau or Office under delegated authority; recommend to the Chairman and Commission program priorities, resource and position allocations, management, and administrative policies.

(e) Plan and administer the Commission's Management by Objectives system. Assure that objectives, priorities, and action plans established by Bureaus and Offices are consistent with overall Commission objectives and priorities.

(f) Plan and administer the Commission's Program Evaluation System. Ensure that evaluation results are utilized in Commission decision-making and priority-setting activities.

(g) Direct agency efforts to improve management effectiveness, operational efficiency, employee productivity, and service to the public. Administer Commission-wide management programs.

(h) Plan and manage the administrative affairs of the Commission with respect to the functions of personnel and position management; labor-management relations; budget and financial management; information management and processing; organization planning; management analysis, procurement; office space management and utilization; administrative and office services; supply and property management; records management; personnel and physical security; and international telecommunications settlement.

(i) Serve as the principal operating official on ex parte matters involving restricted proceedings. Review and dispose of all ex parte communications received from the public and others. In consultation with the General Counsel, approve waivers of the applicability of the conflict of interest statutes pursuant to 18 U.S.C. 205 and 208, or initiate necessary actions where other resolutions of conflicts of interest are called for.

(j) Under the general direction of the Defense Commissioner, coordinate the defense activities of the Commission, including recommendation of national emergency plans and preparedness programs covering Commission licenses and planning for continuity of essential Commission functions during national emergency conditions. Act as alternative Commission representative to emergency planning groups of other agencies.

(k) With the concurrence of the General Counsel, interpret rules and regulations pertaining to fees.

(l) Ensure that the resource and administrative aspects of the Commission's international activities are fully coordinated with other Commission programs and functions. Formulate and administer all management and administrative policies and programs for international communications activities on behalf of the Chairman and the Commission.

0.12 Units in the Office.

- (a) Immediate Office of the Managing Director.
- (b) FCC International Telecommunications Advisor.
- (c) Labor Management Relations Office.
- (d) Management by Objectives/Program Evaluation Staff.
- (e) Associate Managing Director for Information Management.
 - (1) Network Management Staff.
 - (2) Computer Applications Division.
 - (3) Information Processing Division.
 - (4) Planning and Analysis Division.
- (f) Associate Managing Director for Operations.
 - (1) Financial Management Division.
 - (2) Operations Support Division.
- (g) Emergency Communications Division.
- (h) Internal Review and Security Division.
- (i) Personnel Management Division.
- (j) The Secretary.

OFFICE OF PUBLIC AFFAIRS

0.15 Functions of the Office. The Office of Public Affairs is directly responsible to the Commission. The Office has the following duties and responsibilities:

(a) Develop, recommend, coordinate and administer Commission objectives, plans and programs to enhance public understanding of and compliance with the Commission's regulatory requirements. Evaluate public information dissemination practices and develop methods of improving these practices.

(b) Act as the principal channel for communicating information to the news media, regulated industries, and the general public on Commission policies, programs, and activities. Make official announcements of Commission decisions and actions. Maintain liaison with the information media to facilitate the dissemination of news and information on FCC activities. Advise the Commission on public reaction to and comment on FCC policies and programs.

(c) Develop, recommend, coordinate and administer objectives, plans and programs to encourage participation by the public in the Commission's decision making processes. Promote increased awareness within the Commission of the impact of Commission policies on the ability of consumers of communications services to participate in decisions that affect them. Evaluate the effectiveness of mechanisms developed and used to facilitate public input and develop new initiatives as appropriate.

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(d) Serve as the Commission's primary point of contact with individual consumers of communications services and with organizations of such consumers. Maintain liaison with consumers to facilitate an interchange of information and cooperative efforts to improve the Commission's information gathering, policy making, and information dissemination functions.

(e) Act as the principal point of public contact in disseminating information about Commission programs to promote equal employment opportunity and minority enterprise in Commission-regulated industries. Maintain liaison with industry representatives, women's and minority groups and other interested parties regarding public information about and public evaluation of these programs. Organize FCC seminars and serve as FCC spokesperson to outside organizations on these subjects.

(f) Develop and implement programs to assist in providing information to minority entrepreneurs engaged in or seeking to participate in telecommunications industries regulated by the Commission.

(g) Review Commission contract procurement policy to devise ways of increasing information about proposed Commission contracts received by minority contractors.

(h) Advise the Commission on its information dissemination and public participation policies, as they affect liaison with the information media, the public and the Commission's regulatees. Provide policy and program guidance to the bureaus and offices on these subjects based on feedback received through the information dissemination functions of the Office.

(i) Maintain liaison with the Field Operations Bureau regarding the press and news media, and consumer assistance and information activities of the Commission's field offices.

§0.21 Functions of the Office. The Office of Plans and Policy, as a staff office to the Commission, assists, advises and makes recommendations to the Commission with respect to the development and implementation of communications policies in all areas of Commission authority and responsibility. A principal function of the Office is to conduct independent policy analyses to assess the long-term effects of alternative Commission policies on domestic and international communication industries and services, with due consideration of the responsibilities and programs of other staff units, and to recommend appropriate Commission action. The Office is also responsible for coordinating the policy research and development activities of other staff units, with special concern for matters which transcend their individual areas of responsibility. The Office is composed of legal, engineering, economic, and sociological policy analysts and other personnel, and is headed by a chief having the following duties and responsibilities:

(a) To identify and define significant communications policy issues in all areas of Commission interest and responsibility;

(b) To conduct technical, economic, and sociological impact studies of existing and proposed communications policies and operations, including cooperative efforts with other staff units and consultant and contract efforts as appropriate;

(c) To develop and evaluate alternative policy options and approaches for consideration by the Commission;

(d) To review and comment on all significant actions proposed to be taken by the Commission in terms of their overall policy implications;

(e) To recommend and evaluate governmental (state and federal), academic, and industry sponsored research affecting Commission policy issues;

(f) To prepare briefings, position papers, proposed Commission actions, or other agenda items as appropriate;

(g) To manage the Commission's policy research program, recommend budget levels and priorities for this program, and serve as central account manager for all contractual policy research studies funded by the Commission;

(h) To coordinate the formation and presentation of Commission positions in domestic communication policy, and to participate in inter-agency and international discussions and conferences, as may be authorized and approved by the Commission; and periodically advise the Commission of current and future participation in international conferences.

(i) To develop and recommend procedures and plans for the effective handling of policy issues within the Commission.

0.31 Functions of the Office. The Office of Science and Technology has the following duties and responsibilities:

(a) To plan and direct broad programs for development of information relative to communications techniques and equipment, radiowave propagation, and new uses for communications, and advise the Commission and staff offices in such matters.

(b) To represent the Commission and serve as its coordinator for various national and international conferences and meetings devoted to the progress of communications and the development of information and standards relative thereto.

(c) To conduct scientific and technical studies in advanced phases of terrestrial and space communications, and special projects to obtain theoretical and experimental data on new or improved techniques.

(d) To advise the Commission concerning engineering matters, including the privacy and security of communications, involved in making or implementing policy or in resolving specific cases.

(e) To develop and implement procedures to acquire, store, and retrieve scientific and technical information useful in the engineering work of the Commission.

(f) To advise and represent the Commission on frequency allocation and spectrum usage matters, including those covered by international agreements.

(g) To render, in cooperation with the General Counsel and the Office of Plans and Policy, advice to the Commission, participate in and coordinate staff work with respect to general frequency allocation proceedings not within the jurisdiction of any single bureau, and render service and advice with respect to rule making matters and proceedings affecting more than one Bureau.

(h) To collaborate with and advise other Bureaus and Offices in the formulation of technical requirements of the Rules.

(i) To administer Parts 2, 5, 15, and 18 of this chapter, including licensing, recordkeeping, and rule making.

(j) To perform all engineering and management functions of the Commission with respect to formulating rules and regulations, technical standards, and general policies for Parts 15 and 18 of this chapter, and for type approval and acceptance, and certification of radio equipment for compliance with the Rules.

(k) To maintain liaison with other agencies of government, technical experts representing foreign governments, and members of the public and industry concerned with communications and frequency allocation and usage.

(l) To calibrate and standardize technical equipment and installations used by the Commission.

(m) To exercise authority as may be assigned or referred by the Commission pursuant to section 5(d) of the Communications Act of 1934, as amended.

0.32 Units in the Office. The Office of Science and Technology is comprised of the following units:

- (a) Immediate Office of the Chief Scientist;
- (b) Policy and Management Staff;
- (c) Authorization and Standards Division;
- (d) Spectrum Management Division;
- (e) Technical Analysis Division.

OFFICE OF THE GENERAL COUNSEL

0.41 Functions of the Office. The Office of the General Counsel has the following duties and responsibilities:

(a) To advise and represent the Commission in matters of litigation.

(b) To advise and make recommendations to the Commission with respect to proposed legislation and to coordinate the preparation of Commission views thereon for submission to Congress.

(c) To participate in international conferences and in the implementation of international agreements.

(d) To interpret the statutes, international agreements, and international regulations affecting the Commission.

(e) To prepare and make recommendations and interpretations concerning procedural rules of general applicability; review all rules for consistency with other rules, uniformity, and legal sufficiency.

(f) To conduct research in legal matters as directed by the Commission.

(g) In cooperation with the Chief Engineer, to participate in, render advice to the Commission, and coordinate the staff work with respect to general frequency allocation proceedings and other proceedings not within the jurisdiction of any single Bureau, and to render advice with respect to rule making matters and proceedings affecting more than one Bureau.

(h) To perform all legal functions with respect to experimental operations under Part 5 of the Commission's rules; the operation of restricted radiation devices under Parts 15 and 18 of the rules; and type approval and type acceptance of radio equipment.

(i) To exercise such authority as may be assigned or referred by the Commission pursuant to section 5(d) of the Communications Act of 1934, as amended.

(j) To cooperate with the Common Carrier Bureau and the Office of Chief Engineer on all matters pertaining to space satellite communications.

(k) To study the licensing practices of patentees and assignees in communications services regulated by the Commission, particularly in situations referred to it by the Office of Chief Engineer; and, in collaboration with the Office of Chief Engineer, to develop appropriate recommendations for Commission action.

(l) To interpret statutes and executive orders affecting the Commission's national defense responsibilities, and to perform such functions involving implementation of such statutes and executive orders as may be assigned to it by the Commission or the Defense Commissioner.

(m) To perform all legal functions with respect to leases, contracts, tort claims and such other internal legal problems as may arise.

(n)

(o) To advise the Commission in the preparation and revision of rules and the implementation and administration of the Freedom of Information, Privacy, and Sunshine Acts.

(p) To assist and make recommendations to the Commission and to individual Commissioners designed to review initial decisions as to the disposition of cases of adjudication and such other cases as, by Commission policy, are handled in the same manner and which have been designated for hearing.

0.42 Units in the Office. The Office of General Counsel is divided into the following units:

- (a) Immediate Office of the General Counsel.
- (b) Litigation Division.
- (c) Administrative Law and Legislation Division.
- (d) Adjudication Division.

0.43 through 0.48 Deleted

MASS MEDIA BUREAU

0.61 Functions of the Bureau. The Mass Media Bureau develops, recommends and administers policies and programs for the regulation of all radio and television broadcast industry services. Advises and recommends to the Commission, or acts for the Commission under delegated authority, in matters pertaining to the regulation and development of radio and television services. The Mass Media Bureau has the following duties and responsibilities:

- (a) Process applications for authorizations in radio and television services, including conventional and auxiliary broadcast services, direct broadcast satellite services and cable television relay services.
- (b) Administer U.S. responsibilities under international agreements and treaty obligations pertaining to broadcasting.
- (c) Process applications for renewal of licenses and for assignment or transfer of ownership interests in such licenses.
- (d) Participate in hearings before the Administrative Law Judges, the Review Board and the Commission.
- (e) Plan and develop proposed rulemakings and conduct comprehensive studies and analyses (legal, engineering, social and economic) of various petitions for policy or rule changes submitted by industry or the public.
- (f) Conduct studies and compile data relating to radio and television network operations necessary for the Commission to develop and maintain an adequate regulatory program.
- (g) Investigate complaints and answer general inquiries from the public and handle political broadcasting and fairness doctrine complaints.
- (h) Develop, recommend, implement, and administer policies and programs with respect to the regulation of cable television systems and related private microwave radio facilities.
- (i) Process applications for compensation submitted pursuant to Subpart M, Part 1 of this chapter.

0.62 Units of the Bureau. The Mass Media Bureau is comprised of the following units:

- (a) Office of the Bureau Chief.
- (b) Administration and Management Staff.
- (c) Audio Services Division.
- (d) Enforcement Division.
- (e) Policy and Rules Division.
- (f) Video Services Division.

0.73 through 0.91 deleted.

COMMON CARRIER BUREAU

0.91 Functions of the Bureau. The Common Carrier Bureau develops, recommends and administers policies and programs for the regulation of services, facilities, rates and practices of entities which furnish interstate or foreign communication service for hire, whether by wire, radio, cable or satellite facilities, and of ancillary operations related to the provision or use of such services. The Bureau also regulates the rates, terms and conditions for cable television pole attachments, where such attachments are not regulated by a state and not provided by railroads or governmentally-or cooperatively-owned utilities.

0.92 Units of the Bureau.

- (a) Office of the Bureau Chief
- (b) Deputy Bureau Chief for Operations
- (c) Deputy Bureau Chief for Policy
- (d) Assistant Bureau Chief/Management
- (e) Assistant Bureau Chief/International
- (f) International Facilities Planning Division
- (g) International Facilities Authorization and Licensing Division
- (h) Enforcement Division
- (i) Domestic Facilities Division
- (j) Hearing Division
- (k) Mobile Services Division
- (l) Tariff Division
- (m) Accounting and Audits Division
- (n) Consumer Affairs Division
- (o) Economics Division
- (p) Policy and Program Planning Division

0.93 through 0.102 deleted.

FIELD OPERATIONS BUREAU

0.111 Functions of the Bureau. Responsible for all Commission engineering activities performed in the field relating to radio stations and wire facilities including enforcement activities (inspection, investigation, monitoring), radio operator examination and licensing, interference suppression, and communications user liaison.

(a) Enforce the Commission's rules and regulations; monitor, inspect, and investigate all non-government communications matters.

(b) Advise the Commission and act in matters pertaining to the enforcement of the Commission's rules and regulations, licensing of commercial radio operators (part 13), marking and lighting of antenna towers (Part 17) and field liaison with the user public and local and federal government agencies (Part 0).

(c) Participate in international conferences dealing with monitoring and measurements; serve as the point of contact for the United States government in matters of international monitoring, fixed and mobile direction finding, and interference elimination.

(d) Reduce or eliminate interference to authorized communications.

(e) Develop and implement Bureau-wide management programs; prepare consolidated budget estimates and justifications for the Bureau; develop and control execution of operating budgets and financial plans.

(f) Develop and implement Bureau plans for personnel management and organization planning; maintain personnel records; coordinate external management surveys, studies, and audits of Bureau operations; conduct or coordinate internal studies of systems and procedures.

(g) Plan and coordinate requirements for administrative support services such as space and printing.

(h) Develop overall policies, programs, objectives, and priorities (budget year and beyond) for all programs and activities; review program performance, accomplishments, and effectiveness; recommend changes in policies, programs, objectives, and priorities.

(i) Analyze short and long-term technical developments and the impact of predicted growth of existing and new telecommunications services on mission and workload; recommend changes in field enforcement and public service techniques and organization to maximize bureau mission accomplishment; develop plans to intergate new and revised requirements for field enforcement and public service activities into current and future programs.

(j) Recommend legislation and rule changes pertaining to the field enforcement and public service programs; review legislation and rulemaking proposals initiated by other offices with a potential impact on field enforcement and public service operations; determine impact in terms of enforcement techniques and organization, workload, and resources requirements.

(k) Provide projections of future requirements for technical equipment and real property requirements to support field enforcement and public service activities.

(l) Maintain liaison with other agencies and communications users on matters concerning program development and evaluation.

0.112 Units of the Bureau.

The Field Operations Bureau is comprised of the following units.

- (a) Office of the Bureau Chief.
- (b) Enforcement Division.
- (c) Engineering Division.
- (d) Public Service Division.
- (e) Regional Offices.

0.121 Locations of field installations.

(a) and (b) reserved
 (c) Monitoring stations are located at the following geographical coordinates:

Allegan, Michigan
 42°36'20" N. Latitude
 85°57'20" W. Longitude
 Anchorage, Alaska
 61°09'43" N. Latitude
 149°59'55" W. Longitude
 Belfast, Maine
 44°26'42" N. Latitude
 69°04'58" W. Longitude
 Canandaigua, New York
 42°54'48" N. Latitude
 77°15'59" W. Longitude
 Douglas, Arizona
 31°30'02" N. Latitude
 109°39'12" W. Longitude
 Ferndale, Washington
 48°57'21" N. Latitude
 122°33'13" W. Longitude
 Fort Lauderdale, Florida
 26°06'08" N. Latitude
 80°16'42" W. Longitude
 Grand Island, Nebraska
 40°55'21" N. Latitude
 98°25'42" W. Longitude
 Kingsville, Texas
 27°26'29" N. Latitude
 97°53'00" W. Longitude
 Laurel, Maryland
 39°09'54" N. Latitude
 76°49'17" W. Longitude
 Livermore, California
 37°43'30" N. Latitude
 121°45'12" W. Longitude
 Powder Springs, Georgia
 33°51'44" N. Latitude
 84°43'26" W. Longitude
 Sabana Seca, Puerto Rico
 18°27'23" N. Latitude
 66°13'37" W. Longitude
 Waipahu, Hawaii
 21°22'45" N. Latitude
 157°59'54" W. Longitude

PRIVATE RADIO BUREAU

0.131 Functions of the Bureau. The Private Radio Bureau develops, recommends, and administers policies and programs for the development and regulation of the Private Radio Services. These services include nationwide and international use of radio by persons, businesses, state and local governments, and other organizations licensed to operate their own communications systems for their own use as an adjunct of their primary business or other activity. This program includes, among other (1) the compulsory use of radio for safety at sea purposes, and (2) the regulation of public coast stations. The Bureau performs the following functions:

(a) Advises and makes recommendations to the Commission and acts for the Commission in matters pertaining to the regulation and development of the Private Radio Services. These matters include; Rulemaking, waivers of rules, action on applications for authorizations, adjudicative hearings, enforcement activities, legislation, and defence matters.

(b) Participates in treaty activities and all phases of international conferences concerning the Private Radio Services.

(c) Conducts studies of frequency requirements in the Private Radio Services; recommends allocations of frequencies and drafts frequency assignment plans for these services.

(d) Studies technical requirements for equipment for the Private Radio Services in accordance with standards established by the Chief Scientist.

(e) Collaborates and coordinates with Federal and State Government agencies in matters involving the Private Radio Services.

(f) Advises and assists members of industry and user groups interested in private Radio Services.

0.132 Units in the Office.

The Private Radio Bureau is comprised of the following units:

- (a) Office of the Bureau Chief.
- (b) Administration and Management staff.
- (c) Land Mobile and Microwave Division.
- (d) Licensing Division.
- (e) Special Services Division.

OFFICE OF ADMINISTRATIVE LAW JUDGES

§0.150 Presiding officer. For all purposes throughout these rules, the title "Hearing Examiner" shall be changed to "Administrative Law Judge"; "Chief Hearing Examiner" shall be changed to "Chief Administrative Law Judge"; and "Assistant Chief Hearing Examiner" shall be changed to "Assistant Chief Administrative Law Judge."

§0.151 Office of Hearing Examiners. The Office of Hearing Examiners consists of a Chief Hearing Examiner, an Assistant Chief Hearing Examiner, and as many other Hearing Examiners a qualified and appointed pursuant to the requirements of Section 11 of the Administrative Procedure Act as the Commission may find necessary. It is responsible for hearing and conducting all adjudicatory cases designated for any evidentiary adjudicatory hearing other than those designated to be heard by the Commission en banc, and for such other hearing as the Commission may assign.

§0.152 Responsibilities of the Chief Hearing Examiner. The Chief Hearing Examiner and, in his absence, an Acting Chief Hearing Examiner, appointed by the Chief Hearing Examiner, have the following administrative responsibilities:

(a) To coordinate and supervise administratively the activities of the Office of Hearing Examiners.

(b) To prepare and maintain hearing calendars, showing the time and place of the commencement of hearings.

(c) To receive, correlate and approve recommendations of the Hearing Examiners of the Commission on matters relating to changes in rules and regulations governing hearing procedures, and recommend to the Commission desirable changes in said rules and regulations to promote the simplified and expeditious conduct of proceedings.

(d) To require and prepare reports, statistical data and other information requested or required by the U. S. Civil Service Commission or other offices or agencies of the U. S. Government concerned with the proper operation of the Office of Hearing Examiners.

(e) To serve, upon instruction of the Commission or the Chairman, as liaison for the Commission and the Office of Hearing Examiners in the making of appropriate arrangements for the securing of advice or information from representatives of other agencies, bar associations, and other interested persons in connection with the formulation and improvement of administrative procedures and practices applicable to the Commission's proceedings.

(f) To exercise such authority as may be assigned by him by the Commission pursuant to Section 5(d) of the Communications Act, as amended.

REVIEW BOARD

0.161 Functions of the Board. The review Board is a permanent body with continuing functions, composed of three or more Commission employees designated by the Commission. The Board reviews initial decisions and other hearing matters referred to it by the Commission, takes original action on certain interlocutory matters referred to it by the Commission, and performs such additional duties not inconsistent with these functions as may be assigned to it by the Commission.

DEFENSE AND EMERGENCY PREPAREDNESS FUNCTIONS

0.181 The Defense Commissioner. A Defense Commissioner and two Alternate Defense Commissioners are designated by the Commission. The Defense Commissioner directs the defense activities of the Commission and has the following duties and responsibilities:

(a) To keep the Commission informed as to significant developments in the field of emergency preparedness, defense mobilization, and any defense activities that involve formulation or revision of Commission policy in any area of responsibility of the Commission.

(b) To represent the Commission in national defense matters requiring conferences or communications with other governmental officers, departments, or agencies.

(c) To act as the Defense Coordinator in representations with other agencies with respect to planning for the continuity of the essential functions of the Commission under national emergency conditions, and to serve as the principal representative of the Commission to the Interagency Emergency Planning Committee of the Federal Preparedness Agency/General Services Administration.

(d) To serve as the principal representative of the Commission to the Interagency Civil Defense Committee of the Defense Civil Preparedness Agency of the Department of Defense.

(e) To serve as the principal point of contact for the Commission on all matters pertaining to the National Communications System.

(f) To take such measures as will assure continuity of the Commission's functions under any foreseeable circumstances with a minimum of interruption.

(g) In the event of enemy attack, or the imminent thereof, or other disaster resulting in the inability of the Commission to function at its offices in Washington, D.C., to assume all of the duties and responsibilities of the Commission and the Chairman, until relieved or augmented by other Commissioners or members of the staff, as set forth in Sections 0.186 and 0.383.

(h) To approve national emergency plans and develop preparedness programs covering: Provision of service by common carriers; broadcasting facilities, and the safety and special radio services; radio frequency assignment; electro-magnetic radiation; investigation and enforcement.

(i) To perform such other duties and assume such other responsibilities related to the Commission's defense activities as may be necessary for the continuity of functions and the protection of Commission personnel and property.

0.182 Executive Director. (a) Recommends national emergency plans and preparedness programs covering: provision of service by common carriers, broadcasting facilities, and the safety and special radio services; radio frequency assignment; electromagnetic radiation; investigation and enforcement.

(b) Acts as Alternate Defense Coordinator in representations with other agencies with respect to planning for the continuity of the essential functions of the Commission under national emergency conditions.

(c) Serves as the alternate representative of the Commission to the Interagency Emergency Planning Committee of the Federal Preparedness Agency/General Services Administration; serves as the alternate representative of the Commission to the Interagency Civil Defense Committee of the Defense Civil Preparedness Agency of the Department of Defense.

(d) Provides for the Executive Secretariat for the National Industry Advisory Committee.

(e) Keeps the Defense Commissioner informed as to significant developments in the field of emergency preparedness and related defense activities.

0.183 Emergency Communications Division. (a) The Emergency Communications Division under the supervision and direction of the Executive Director and with the concurrence of the responsible Bureau Heads and Staff Officers, develops and prepares for the Executive Director national emergency plans and develops preparedness programs covering:

(1) Provision of service by common carriers, broadcasting facilities, and safety and special radio services under national emergency conditions;

(2) Assignment of radio frequencies to Commission licensees under national emergency conditions;

(3) Preparation of data with respect to facilities operated by the non-government communications industry for use by the Mathematical Computation Laboratory;

(4) Control of non-Federal Government radio stations in an emergency;

(5) Investigations of violations of pertinent law and regulations in an emergency, and development of procedures to bring about the appropriate enforcement actions required in the interest of national security;

(6) Provision of financial, credit or other assistance to common carriers and Commission licensees who need such assistance in various conditions of mobilization;

(7) Development by common carriers and licensees of standby plans for the conservation and salvage of supplies and equipment as well as the rehabilitation, restoration, or replacement of essential communication facilities after an attack;

(8) Preparation, as claimant agency for the non-Government communications industry, to claim materials, manpower, equipment, supplies and services needed in support of the common carriers and Commission licensees from the appropriate resource agencies, and work with these agencies to insure availability of such resources in an emergency;

(9) Provision of advice and guidance to achieve industry protection necessary to maintain the integrity of the facilities and services provided by common carriers and radio station licensees, and promote a national program to stimulate disaster preparedness and damage control;

(10) Development and maintenance of a capability to assess the effects of attack on communication facilities and services subject to Commission regulation, which are essential in a national emergency, and provision of data to appropriate agencies.

(b) Prepares, plans, in collaboration with the Bureaus and Offices, for the continuity of Government functions of the Commission in the event of a national emergency, including plans for emergency mobilization of the Commission's personnel; positioning, maintenance, and protection of supplies, material and essential records; and selection, training, transportation and emergency assignment of personnel.

(c) Furnishes administrative support for the National Industry Advisory Committee, its sub-committees and special working groups as may be formed for specific purposes by the Defense Commissioner.

0.184 reserved

§ 0.185 Responsibilities of the bureaus and staff offices. The heads of each of the several bureaus and staff offices, in rendering advice and assistance to the Executive Director in the performance of his duties with respect to defense activities will have the following duties and responsibilities:

(a) To keep the Executive Director informed of the instigation, progress, and completion of programs, plans, or activities with respect to defense in which they are engaged or have been requested to engage.

(b) To render assistance and advice to the Executive Director on matters which relate to the functions of their respective bureaus or staff offices.

(c) To render such assistance and advice to other agencies as may be consistent with the functions of their respective bureaus or staff offices and the Commission's policy with respect thereto.

(d) To perform such other duties related to the Commission's defense activities as may be assigned to them by the Commission.

§ 0.186 Emergency Relocation Board. (a) An Emergency Relocation Board, to be convened at the Commission's relocation headquarters, performs the functions of the Commission in the event of the inability of the Commission to function at its offices in Washington, D. C., resulting from disaster or the threat of imminent disaster from enemy attack or from natural causes, either:

(1) At the time of or under circumstances specified in a directive from the President.

(2) In the absence thereof, upon receipt of a warning signal indicating that an attack on the capital is likely.

(3) In the absence of either a directive or warning signal, immediately following an actual attack.

(b)(4) The Board shall comprise such Commissioners as may be present and able to act or, if no Commissioner is present and able to act, the occupant of the following positions, in the order listed, who is present and able to act:

- (1) The Chief, Field Operations Bureau.
- (2) The General Counsel.
- (3) The Chief Engineer.
- (4) The Chief, Safety and Special Radio Services Bureau.
- (5) The Chief, Broadcast Bureau.
- (6) The Chief, Common Carrier Bureau.
- (7) The Executive Director.
- (8) The Deputy Chief, Field Operations Bureau.
- (9) The Deputy General Counsel.
- (10) The Deputy Chief Engineer.
- (11) The Deputy Chief, Safety and Special Radio Services Bureau.
- (12) An Deputy Chief, Broadcast Bureau.
- (13) The Deputy Chief, Common Carrier Bureau.
- (14) The Chief of Division, ranking in the same order as indicated in subparagraphs (1) to (7) of this paragraph.

SUBPART B - DELEGATIONS OF AUTHORITY

Authority: §§0.201 - 0.387 issued under sec. 5, 48 Stat. 1068, as amended: 47 U.S.C. 155. Additional authority is cited in parentheses following the sections affected.

GENERAL

§0.201 General provisions.

(a) There are three basic categories of delegations made by the Commission pursuant to section 5(d) of the Communications Act of 1934, as amended:

(1) Delegations to act in non-hearing matters and proceedings. The great bulk of delegations in this category are made to bureau chiefs and other members of the Commission's staff. This category also includes delegations to individual commissioners and to boards or committees of commissioners, such as the Telegraph and Telephone Committees.

(2) Delegations to rule on interlocutory matters in hearing proceedings. Delegations in this category are made to the Review Board and to the Chief Hearing Examiner.

Note: Interlocutory matters which are delegated neither to the Review Board nor to the Chief Hearing Examiner are ruled on by the presiding officer by virtue of the authority vested in him to control the course and conduct of the hearing. This authority stems from section 7 of the Administrative Procedure Act and section 409 of the Communications Act rather than from delegations of authority made pursuant to section 5(d) of the Communications Act. (See §§0.218 and 0.341.)

(3) Delegations to review an initial decision. Delegations in this category are made to individual commissioners, to panels of commissioners, or to the Review Board.

(b) Delegations are arranged in this subpart under headings denoting the person, panel, or board to whom authority has been delegated, rather than by the categories listed in paragraph (a) of this section.

(c) Procedures pertaining to the filing and disposition of interlocutory pleadings in hearing proceedings are set forth in §§1.291-1.298 of this chapter. Procedures pertaining to appeals from rulings of the presiding officer are set forth in §1.301. Procedures pertaining to reconsideration of the presiding officer's rulings are set forth in §1.303. Procedures pertaining to reconsideration and review of actions taken pursuant to delegated authority are set forth in §§1.101, 1.102, 1.104, 1.106, 1.113, 1.115, and 1.117. Procedures pertaining to exceptions to initial decisions are set forth in §§ 1.276-1.279.

(d) The Commission, by vote of a majority of the members then holding office, may delegate its functions either by rule or by order, and may at any time amend, modify, or rescind any such rule or order.

(1) Functions of a continuing or recurring nature are delegated by rule. The rule is published in the Federal Register and is included in this subpart.

(2) Functions pertaining to a particular matter or proceeding are delegated by order. The order is published in the Federal Register and associated with the record of that matter or proceeding, but neither the order nor any reference to the delegation made thereby is included in this subpart.

§0.203 Authority of person, panel, or board to which functions are delegated.

(a) The person, panel, or board to which functions are delegated shall, with respect to such functions, have all the jurisdiction, powers, and authority conferred by law upon the Commission, and shall be subject to the same duties and obligations.

(b) Except as provided in §1.102 of this chapter, any action taken pursuant to delegated authority shall have the same force and effect and shall be made, evidenced, and enforced in the same manner as actions of the Commission.

§0.204 The exercise of delegated authority.

(a) Authority to issue orders and to enter into correspondence. Any official (or group of officials) to whom authority is delegated in this subpart is authorized to issue orders (including rulings, decisions, or other action documents) pursuant to such authority and to enter into general correspondence concerning any matter for which he is responsible under this subpart or subpart A of this part.

(b) Authority of subordinate officials. Authority delegated to any official to issue orders or to enter into correspondence under paragraph (a) of this section may be exercised by that official or by appropriate subordinate officials acting for him.

(c) Signature.

(1) A final decision of the Review Board is signed by the Board member responsible for its preparation.

(2) Other orders made by a committee, board or panel identify the body and are signed by the Secretary.

(3) Upon signing an order, the Secretary affixes the Commission's seal.

(4) General correspondence by a committee or board is signed by the committee or board chairman.

(5) All other orders and letters are signed by the official who has given final approval of their contents.

(6) With the exception of certain license forms also signed by the issuing Engineer in Charge, license forms bear only the signature of the Secretary and the seal of the Commission.

(d) Form of orders. Orders may be issued in any appropriate form (e.g., as captioned orders, letters, telegrams) and may, if appropriate, be issued orally. Orders issued orally shall, if practicable, be confirmed promptly in writing.

(e) Minutes entries. Except as otherwise provided in this subpart, actions taken as provided in paragraph (d) of this section shall be recorded in writing and filed in the official minutes of the Commission.

COMMISSIONERS

0.211 Chairman. The responsibility for the general administration of internal affairs of the Commission is delegated to the Chairman of the Commission. The Chairman will keep the Commission advised concerning his actions taken under this delegation of authority. This includes:

(a) Actions of routine character as to which the Chairman may take final action.

(b) Actions of non-routine character which do not involve policy determinations. The Chairman may take final action on these matters but shall specifically advise the Commission on these actions.

(c) Actions of an important character or those which involve policy determinations. In these matters the Chairman will develop proposals for presentation to the Commission.

(d) To set within the purview of the Federal Tort Claims Act, as amended, 28 U.S.C. 2672, upon tort claims directed against the Commission where the amount of damages does not exceed \$5,000.

(e) Authority to act as "Head of the Agency" or "Agency Head" for administrative determinations required by Federal Procurement Regulations and Federal Management Circulars.

§0.212 Board of Commissioners. (a) Whenever the Chairman or Acting Chairman of the Commission determines that a quorum of the Commission is not present or able to act, he may convene a Board of Commissioners. The Board shall be composed of all Commissioners present and able to act.

(b) The Board of Commissioners is authorized to act upon all matters normally acted upon by the Commission en banc, except the following:

(1) The final determination on the merits of any adjudicatory or investigatory hearing proceeding or of any rule making proceeding, except upon a finding by the Board that the public interest would be disserved by waiting the convening of a quorum of the Commission.

(2) Petitions for reconsideration of Commission actions.

(3) Applications for review of actions taken pursuant to delegated authority.

(c) The Board of Commissioners is authorized to act upon all matters normally acted upon by an individual Commissioner (when he or his alternates are not present or able to act) or by a committee of Commissioners (in the absence of a quorum of the committee).

(d) Actions taken by the Board of Commissioners shall be recorded in the same manner as actions taken by the Commission en banc.

(e) This section has no application in circumstances in which the Commission is unable to function at its offices in Washington, D.C. See §§0.181 - 0.186 and 0.381 - 0.387.

§ 0.218 Authority of, and delegated to, an individual commissioner or commissioners.

(a) One or more members of the Commission may be designated to preside in a hearing proceeding. The commission or commissioners designated to preside at such a hearing shall fix the time and place of the hearing and shall act upon all motions, petitions or other matters which may arise while the proceeding is in hearing status.

(b) One or more members of the Commission may be designated to review an initial decision issued in any hearing case.

(c) Except for actions taken during the course of a hearing and upon the record thereof, actions taken by a commissioner or commissioners pursuant to the provisions of this section shall be recorded in writing and filed in the official minutes of the Commission.

Managing Director

§0.231 Authority delegated. (a) The Managing director, or his designee, is delegated authority to exempt Standard, FM, and Television broadcast licensees from the requirement of installing and maintaining the necessary equipment to receive Emergency Action Notifications and Terminations and arranging for either an associated listening watch, or automatic alarm, or both. (See §73.922 of this chapter.)

(b) The Managing Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to execute in the name of the Commission all agreements pertaining to the loan of United States Government property to radio station licensees for national defense purposes.

(c) The Managing Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to act upon requests for waiver of the filing fee requirements modification applications occasioned by natural disasters.

(d) The Managing Director, or his designee, is delegated authority to make nonsubstantive, editorial revisions of the Commission's rules and regulations upon approval of the bureau or staff office primarily responsible for the particular part or section involved.

(e) The Managing Director, or his designee, in consultation with the General Counsel, is delegated authority to make determinations regarding and waive the applicability of section 4(b) of the Communications Act (47 U.S.C. 154(b)) and the Federal Conflicts of interest statute (18U.S.C. 203, 205 and 208).

(f) The Managing Director, or his designee, upon securing the concurrence of the General Counsel, is delegated authority, within the purview of the Federal Tort Claims Act, as amended, 28 U.S.C. 2672, to grant tort claims directed against the Commission where the amount of the claim does not exceed \$5,000. In addition thereto, the Managing Director, or his designee, upon securing the concurrence of the General Counsel, is delegated authority to act in the disposition of claims arising under the Military Personnel and Civilian Employees' Claims Act, as amended, 31 U.S.C. 3701 and 3721, where the amount of the claim does not exceed \$6,500.

(g) The Managing Director, is delegated authority to act as Head of the Procurement Activity and Contracting Officer for the Commission and to designate appropriate subordinate officials to act as Contracting Officers for the Commission. As Head of the Procurement Activity, the Executive Director will refer all appeals filed against final decisions regarding award of contracts to the Board of Contract Appeals of the General Services Administration for resolution. Appeals will be handled in accordance with the Rules of the Board of Contract Appeals.

(h) The Managing Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to act upon requests for refund of fees.

(i) The Chief, Internal Review and Security Division, Office of Managing Director, is "delegated agency ethics official" within the meaning of sections 206 and 209(10) of the Ethics in Government Act of 1978, Pub. L. 95-521, 92 Stat. 1824, (1978).

(j) The Managing Director, after consultation with the Chairman shall establish, renew, and terminate all federal advisory committees. He shall also exercise all management responsibilities under the Federal Advisory Committee Act as amended (Pub. L. No. 92-463, 5 U.S.C. App.).

CHIEF SCIENTIST

§0.241 Authority delegated to the Chief Scientist The Chief Scientist is delegated authority to act upon the following matters which are not in hearing status:

(a) With respect to type approval of radio frequency equipment and certification of radio frequency equipment as acceptable for licensing, to exercise all functions of the Commission pertaining to the:

(1) Examination of all applications for type approval of radio frequency equipment as provided for in this chapter; performance of tests, analysis of data, and determination of compliance with the provisions of this chapter; issuance of type approval certificates for radio frequency equipment which complies with the provisions of this chapter; and issuance of lists of type approved equipment.

(2) Examination of all applications for certification of radio frequency equipment as acceptable for licensing as provided for in this chapter; notification to the applicant that an examination of the certified technical information and data submitted in accordance with the provisions of this chapter indicates that the equipment does or does not appear to be acceptable for licensing in the particular radio service or services involved; and issuance of lists of radio frequency equipment certified as acceptable for licensing.

(3) Examination of all applications for certification (approval) of subscription television technical systems as acceptable for use under a subscription television authorization as provided for in this chapter; notification of the applicant that an examination of the certified technical information and data submitted in accordance with the provisions of this chapter indicates that the system does or does not appear to be acceptable for authorization as a subscription television system; and issuance of a list of subscription television systems certified as acceptable for authorization. The delegation granted in this subparagraph shall be exercised in consultation with the Chief, Broadcast Bureau

(4) Examines all applications for registrations of equipment as acceptable for direct connection to the telephone network jointly in cooperation with the Chief, Common Carrier Bureau; upon obtaining the concurrence of the Chief, Common Carrier Bureau, issues registration authorizations and issues a list of equipment registered as acceptable for direct connection to the telephone network.

(b) With respect to stations operating in the Experimental Radio Service that are not engaged in the development of an established service and administered by a single Bureau, to act upon the following matters:

(1) Applications to assign frequencies, power, emission, and types of equipment and to approve the apparatus to be employed by these radio stations so as to provide the maximum results from the experimentation which can reasonably be expected of the licensee.

(2) Applications from existing licensees which involve a change in frequency, power, or type of emission.

(3) Applications which involve only a change in location, type, model, design or number of transmitters.

(4) Requests by licensees or permittees for cancellation of their station licenses, construction permits or other authorizations.

(5) Applications for license or modification of license to cover construction permit.

(6) Applications for renewal of licenses.

(7) Applications for extension of the expiration date of construction permits.

(8) For addition, modification, or coordination of programs of research or experimentation so as to provide the maximum results from the experimentation which can be reasonably expected of the licensee or licensees.

(9) Requests for operation with a modified antenna system where formal application is not required.

(10) Requests for extension of time within which to comply with technical requirements specified in authorizations, orders, rules, or releases of Commission.

(11) Representation of compliance with technical requirements specified in authorizations, orders, rules, or releases of the Commission (except formal applications).

(12) Requests to operate at a temporary location with a temporary antenna system.

(13) Request for special conditions of operation necessary to comply with technical requirements specified in authorizations, orders, rules or releases of the Commission.

(14) Request for special temporary authority in emergency cases, at times outside of the regular office hours of the Commission and requiring immediate action during those hours.

(15) Request for exemption from station identification requirements.

(16) Request for exemption from transmitter control requirements.

(17) Request for exemption from limitation on authorized points of communication.

(c) To assign new or modified call signs to stations in all of the radio services except the Personal and Amateur Radio Services. See 0.332 (a) and 1.550.

(d) To act on requests for extension of time within which briefs, comments and pleadings may be filed, in matters or proceedings for which the Office is responsible or primarily responsible. (If responsibility is shared with other Bureaus or Offices, action shall be coordinated with them.)

§0.243 Authority delegated to the Chief Engineer upon securing concurrence of the General Counsel. (a) The Chief Engineer, upon securing concurrence of the General Counsel, is delegated authority with respect to stations operating in the experimental radio services, other than experimental and developmental stations operating in established services under the jurisdiction of a single bureau, to act upon the following matters:

(1) Applications for construction permits for new stations.

(2) All requests for withdrawal of papers in accordance with 1.8 of this chapter.

(3) Applications for consent to assignment and transfer of control of station authorizations.

(4) An extension of time previously ordered by the Commission within which transfer of control or assignment of licenses be effectuated.

(b) The Chief Engineer, upon securing concurrence of the General Counsel, is authorized to issue notices of apparent liability, final forfeiture orders, and orders canceling or reducing forfeitures imposed under 1.80(f) of this chapter, in the amount of \$2,000 or less; and is authorized to issue citations pursuant to 1.80(d).

(c) The Chief Scientist, upon securing concurrence of the General Council is delegated authority to act upon requests for waiver of the all-channel television receiver rules contained in Part 15 of this chapter where the receiver involved in such requests is an integral part of a hospital communications system. In such cases, a grant may be made when there is no danger of adversely affecting the audience potential of present or future UHF television stations, and benefits are to be derived from the grants of the request.

(d) The Chief Scientist, upon securing concurrence of the General Council, is authorized to dismiss, as repetitious, any petition for reconsideration of a Commission order which disposed of a petition for reconsideration and which did not reverse, change, or modify the original order.

(e) The Chief Scientist, upon securing concurrence of the General Council, is authorized to dismiss or deny petitions for rule making which are repetitive or meet or which, for other reasons, plainly do not warrant consideration by the Commission.

0.247 Record of actions taken. The application and authorization files and other appropriate files of the Office of the Chief engineer are designated as the official minute entries of actions taken pursuant to 0.241 and 0.243.

GENERAL COUNSEL

0.251 Authority delegated.

(a) RESERVED.

(b) Insofar as authority is not delegated to any other Bureau or Office, and with respect only to matters which are not in hearing status, the General Counsel is delegated authority to act upon requests for extension of time within which briefs, comments or pleadings may be filed.

(c) The General Counsel is delegated authority to dismiss, as repetitious, any petition for reconsideration of a Commission order which disposed of a petition for reconsideration and which did not reverse, change, or modify the original order.

(d) The General Counsel is delegated authority to dismiss or deny petitions for rule making which are repetitive or moot or which, for other reasons, plainly do not warrant consideration by the Commission.

(e) The General Counsel is delegated authority to dismiss as repetitious any petition for reconsideration of a Commission order denying an application for review which fails to rely on new facts or changed circumstances.

(f) The General Counsel is delegated authority to act upon the following matters in hearing proceedings which are pending before the Commission en banc:

(1) Motions or petitions for extension of time.

(2) Pleadings which are moot.

(3) To dismiss, as repetitious, any petition for reconsideration of a Commission order which disposed of a petition for reconsideration and which did not reverse, change, or modify the original order.

(4) To issue orders, in accordance with Commission instructions, specifying or changing the day or hour of oral argument and the time allowed a party for oral argument.

(5) Requests for permission to file pleadings in excess of the length prescribed by the provisions of this chapter. See sections 1.48 and 1.204 of this chapter.

(6) Unopposed motion by any party for dismissal or withdrawal of his own pleading.

(7) Petitions for leave to amend applications where no objection is raised to the acceptance of the amendment.

(8) To issue orders, as appropriate, requesting the filing of further pleadings.

(9) Pleadings which may be dismissed due to procedural defect, subject to being refiled in proper form within five days.

(10) To dismiss, as repetitious, any petition for reconsideration of a Commission order denying an application for review which fails to rely on new facts or changed circumstances.

(11) Petitions or requests for approval of settlement agreements among applicants in comparative hearings where the agreement resolving the conflict among the applications is unopposed and where there are no outstanding issues concerning the basic qualifications of the applicant who would receive a construction permit or a license upon approval of the agreement.

(g) The General Counsel is delegated authority in hearing proceedings to desmiss:

(1) Interlocutory appeals to the Commission of actions taken under delegated authority when the appeal is not authorized by the Commission's Rules.

(2) Requests for substantive relief by the Commission which the Commission may not grant because its jurisdiction over the proceeding has terminated.

(h) The official record of all actions taken by the General Counsel pursuant to 0.251(f) and (g) is contained in the original docket folder, which is maintained by the Secretary in the Dockets Branch.

(i) The General Counsel is delegated authority to issue written determinations on behalf of the Chairman's designee on matters regarding the interception of telephone conversations, as required by the General Services Administration's regulations. 47 CFR 101-37.311 et seq.

OFFICE OF PLANS AND POLICY

0.271 Authority delegated. (a) Insofar as authority is not delegated to any other Bureau or Office and with respect only to matters which are not in hearing status, the Chief Office of Plans and Policy is delegated authority to deny requests or to extend the time within which comments may be filed in dockets over which the Office of Plans and Policy has primary authority.

CHIEF MASS MEDIA BUREAU

0.283 Authority delegated. The performance of functions and activities described in section 0.61 of this part is delegated to the Chief, Mass Media Bureau: Provided, That the following matters shall be referred by the Chief, Mass Media Bureau to the Commission en banc for disposition:

(a) Applications. Formal and information applications for new or modified facilities, and for the renewal, assignment, and transfer of construction permits and licenses involving such facilities, when such applications fail to satisfy the requirements of Commission rules or established Commission policy in the following areas of special concern:

(1) Multiple ownership, concentration of control, and cross-interests. (i) Acquisition of a third broadcast station or modification of facilities if such would result in the common ownership of three broadcast stations where any two are within 100 miles of a third and primary service contour overlap would occur; "one-to-a-market" situations involving UHF stations or TV satellite stations; and duopoly situations involving UHF stations or TV satellite stations: and duopoly situations involving TV satellite stations. (Commonly owned AM and FM stations in the same market are treated as one station for the purpose of the "third station" limitations.)

0.283(a)(1)(ii) - 283(a)(3)(iii)

(ii) Acquisition of a broadcast station by a newspaper in the same area, or other organization having substantial interests in the print media in the same area.

(iii) Creation of common ownership interests, management ties, or employment relationships between licensees serving substantial common areas and populations. Commonality of areas and populations served shall be determined in dupoly situations by overlap of the following service contours: AM-1mVm; FM-1mVm; and TV-Grade B. In one-to-a-market" situations, commonality of areas and populations served shall be determined by community encompassment with the following service contours: AM-smVm; FM-1mVm; and TV-Grade A.

(iv) Acquisition of broadcast properties by corporations or individuals appearing to dominate the economic life of the community.

(2) Deleted.

(3) Anti-trust activity, unfair trade practices, and violations of law not previously considered by the Commission. (i) Proposals by applicants against suits are pending or against whom there is pending any anti-trust suit in which an adverse verdict has been reached.

(ii) Proposals by applicants who have entered into a consent decree, have pleaded guilty or nolo contendere, or have been adjudged guilty in an anti-trust case during the three-year period preceding the filing of the application.

(iii) Proposals by applicants who have been the subject of a final cease and desist or consent order issued by the Federal Trade Commission during the three year period preceding the filing of the application.

(iv) Proposals by applicants or including parties with felony or capital offense conviction records, or against whom a criminal proceeding is pending.

(4) Violations and complaint matters. Proposals filed by applicants against whom violation notices of a serious nature are outstanding or against whom questions suggesting serious misconduct remain unresolved, or by applicants with records of serious past misconduct.

(5) Equal employment opportunities. Proposals filed by applicants whose equal employment opportunities programs do not comply with Commission rules or policies and cannot be cleared by further staff inquiry or action, or whose past performance suggests the existence of discriminatory practices.

(6) Short term licenses and renewals. Proposals which in the opinion of the Chief, Mass Media Bureau, warrant the issuance of a short-term license or renewal authorization.

(7) Programming: Commercial matter. (i) Commercial TV applicants for a new station or assignment or transfer, or renewal of license, proposing to exceed 16 minutes of commercial matter per hour, or during periods of high demand for political advertising, providing for exceptions permitting in excess of 20 minutes of commercial matter per hour during 10% or more of the station's total weekly hours of operation.

(8) Programming: Program content and ascertainment of community needs.
(i) Applications for new stations or assignments and transfers.

(A) Commercial AM and FM proposals of applicants for new stations and of assignees and transferees that have not submitted a narrative statement of their proposed programming, commercial TV proposals of applicants for new stations and of assignees and transferees (except those made by UHF stations not affiliated with major networks) which project for the hours 6:00 a.m. to 12:00 midnight less than the indicated percentages in one or more of the following categories: 5% total local programming; 5% informational (news plus public affairs) programming; and 10% total non-entertainment programming.

(B) Commercial TV proposals of applicants for new stations and of assignees or transferees which contain substantial ascertainment defects which, for any reason, cannot be resolved by further staff inquiry or action. (See 1971 Ascertainment Primer: 27 FCC 2d 650 (1971), 36 FR 4092).

(ii) Applications for renewal.

(A) Commercial TV proposals (except those made by UHF stations not affiliated with major networks) which project for the hours 6:00 a.m. to 12:00 midnight less than the indicated percentages in one or more of the following categories: 5% total local programming; 5% informational (news plus public affairs) programming; and 10% total non-entertainment programming.

(B) Commercial TV proposals containing substantial ascertainment defects which, for any reason, cannot be resolved by further staff inquiry or action. (See 1976 Ascertainment Primer: 57 F.C.C. 2d 418 (1975) recon, granted in part, 61 F.C.C. 2d 1 (1976)).

(9) Programming: Promise versus performance. (i) Applications for assignments and transfers. TV applications for assignment or transfer which vary substantially from the assignor's or transferor's prior representations with respect to commercial practices (as set forth in paragraph (a)(7) of this section), or from the programming categories (as set forth in paragraph (a)(8) of this section), and for which variation there is lacking, in the judgment of Mass Media Bureau, adequate justification in the public interest.

(ii) Applications for renewal. Commercial TV applications for renewal which vary substantially from prior representations with respect to commercial practices (as set forth in paragraph (a)(7) of this section), or from the programming categories set forth in paragraph (a)(8) of this section, and for which variation there is lacking, in the judgment of the Mass Media Bureau, adequate justification in the public interest.

(10) Hearing Orders. (i) Mutually exclusive applications, including renewal and construction permit applications, involving non-routine hearing issues.

(ii) Other renewal and assignment and transfer applications which appear to call for an evidentiary hearing.

(iii) Such other applications, as in the opinion of the Chief, Mass Media Bureau, warrant referral to the Commission prior to designation for hearing.

(11) Interference and mileage separations. Proposals for new or modified AM, FM, and TV facilities which would create substantial new prohibited overlap or station separation shortages. In the case of AM proposals (other than Class IV), a net increase in objectionable interference to another AM station involving more than 1 percent of the population served by such other station, whether or not consented to by the station affected, shall be referred to the Commission.

(12) VHF television expansion. Commercial VHF television proposals seeking to bring or extend their Grade B contours into a significant area or population included within the predicted Grade B contour of a UHF television station where the area or population involved is covered by fewer than 4 VHF television signals.

(13) Agreements to amend or dismiss applications. Any situation in which a community will be deprived of a proposed broadcast station by reason of amendment or dismissal of an application mutually exclusive with another application for a different community.

(14) Experimental and developmental operation. Proposals for experimental and developmental authority containing policy implications which, in the opinion of the Chief, Mass Media Bureau, warrant referral to the Commission.

(15) Miscellaneous applications and requests. (i) Proposals for special temporary, emergency, conditional, or interim operating authority of more than routine significance.

(ii) Any other application, proposals, or request presenting novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.

(b) Petitions and other requests for Commission action. (1) Petitions to deny, informal objections, and other petitions, directed against AM, FM, and TV applications for new or modified facilities, or for renewal, assignment or transfer of control, will be referred to the Commission if they: (i) Contain new or novel issues not previously considered by the Commission, (ii) appear to justify a change in Commission policy; or (iii) present documented allegations of failure to comply with the Commission's Equal Employment Opportunity rules and policies, or the applicant in question falls outside the applicable processing criteria in its employment of women and minorities.

(2) Petitions and other requests for reconsideration of actions taken by the Chief, Mass Media Bureau, when such petitions or requests contain new or novel arguments not previously considered by the Commission, present facts or arguments which appear to justify a change in Commission policy, or request reconsideration of orders designating cases for hearing.

(3) Applications for review of actions taken by the Chief, Mass Media Bureau, which comply with section 1.115 of this chapter.

(4) Petitions and other requests for waiver of Commission rules, whether or not accompanied by an application, when such petitions or requests contain new or novel arguments not previously considered by the Commission, or present facts or arguments which appear to justify a change in Commission policy.

(5) Petitions and other requests for declaratory rulings, when such petitions or requests contain new or novel arguments not previously considered by the Commission, or present facts or arguments which appear to justify a change in Commission policy.

(6) Petitions for rulemaking which have been accepted under section 1.403, and final dispositions of rulemaking proceedings not involving routine changes in the FM and TV Tables of Assignments.

(7) Petitions and other requests for waiver of the prime-time access rule, in areas where Commission policy is not clearly established.

(8) Petitions and other requests for long-term waiver of the policy limiting affiliations by commonly owned networks in the same market.

(9) Petitions and other requests for waiver of the sponsorship identification provisions of the Communications Act, in accordance with section 317(d) thereof.

(10) Any other petition, pleading, or request presenting novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.

(c) Administration and enforcement. (1) Proposed orders to show cause why station licenses or construction permits should not be revoked.

(2) Proposed actions following any case remanded by the courts.

(3) Notices of opportunity for hearing pursuant to section 1.80(g) of this chapter; and notices of apparent liability, final forfeiture orders, and orders cancelling or reducing forfeitures imposed under section 1.80(f) if the amount set out in the notice of apparent liability is more than \$10,000.

(4) Proposed public notices expressing Commission policy, interpreting the provisions of law, regulations, or treaties, or warning the broadcast industry as to certain types of violations.

(5) Problems involving apparent violation of the Commission's rules governing equal employment opportunities or otherwise indicating the existence of discriminatory practices which, in the opinion of the Chief, Mass Media Bureau, or the Equal Employment Opportunity Commission should be brought to the attention of FCC Commissioners.

(6) Any other complaint or enforcement matter presenting novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.

0.284 Actions taken under delegated authority. (a) In discharging the authority conferred by section 0.283 of this part, the Chief, Mass Media Bureau, shall establish working relationships with other bureaus and staff offices to assure the effective coordination of actions taken in the following areas of joint responsibility;

(1) Complaints arising under sections 315 and 605 of the Communications Act -- Office of General Counsel.

(2) Objections to proposed call signs and requests for waiver of procedural rules governing call sign assignments -- Office of Managing Director.

(3) Requests for waiver or refund of filing and/or grant fees -- Office of Managing Director and Office of General Counsel.

(4) Requests for waiver of tower painting and lighting specifications -- Field Operations Bureau.

(5) Matters involving emergency communications -- Office of Managing Director.

(6) Complaints involving equal employment opportunities -- Office of General Counsel.

(7) Requests for use of frequencies or bands of frequencies shared with private sector nonbroadcast or government services -- Office of Science and Technology and appropriate operating bureau.

(8) Requests involving coordination with other agencies of government -- Office of General Counsel, Office of Science and Technology and appropriate operating bureau.

(9) Proposals involving transmitter sites on public lands owned or controlled by the Department of Agriculture or Interior -- Office of Science and Technology.

(10) Proposals involving possible harmful impact on radio astronomy or radio research installations -- Office of Science and Technology.

(11) To act on all applications for authorization, petitions for special relief, petitions to deny, waiver requests, objections, complaints, and requests for declaratory rulings and stays in the Cable Television Services, unless novel questions of fact, law or policy are involved which cannot be resolved under existing precedents and guidelines.

(b) With respect to non-routine applications granted under authority delegated in section 0.283 of this part, the Chief, Mass Media Bureau or his designees, shall enter on the working papers associated with each application a narrative justification of the action taken. While not available for public inspection, these working papers shall, upon request, be made available to the Commissioners and members of their staffs.

(c) The Chief, Mass Media Bureau, shall prepare and submit to the Commission a quarterly statistical summary of actions taken during the preceding quarter under authority delegated to him in section 0.283 of this part. The statistical summary shall be accompanied by a statement of industry trends apparent in the staff handling of non-routine matters during the same quarter.

0.285 Record of actions taken. The history card, the station file, and other appropriate files are designated to be the official record of the action taken by the Chief of the Mass Media Bureau.

(j) To act on requests for special temporary authority in the Cable Television Service and for temporary authority for special operations in the Cable Television Relay Service;

(k) To act on petitions for orders to show cause, or to issue orders to show cause on his own motion, unless novel questions of fact, law, or policy are involved which cannot be resolved under existing precedents and guidelines;

(l) To enter into consent agreements pursuant to §§1.93 and 1.94 of this chapter.

(m) To issue citations pursuant to §1.80 of this chapter, and to issue notices of apparent liability, final forfeiture orders, and orders cancelling or reducing forfeitures imposed under §1.80(f) in the amounts of \$4,000 or less for cable television systems and \$2,000 or less for facilities in the Cable Television Relay Service.

CHIEF, COMMON CARRIER BUREAU

§0.291 Authority delegated. The Chief, Common Carrier Bureau, is hereby delegated authority to perform all functions of the Bureau, described in §0.91, subject to the following exceptions and limitations.

(a) Authority concerning applications. (1) The Chief, Common Carrier Bureau shall not have authority to act on any formal or informal radio applications or Section 214 applications for common carrier services which are in hearing status.

(b) Authority concerning sections 219 and 220 of the Act. The Chief, Common Carrier Bureau shall not have authority to promulgate regulations or orders pursuant to section 219 or section 220 of the Communications Act of 1934, as amended, except that the Chief, Common Carrier Bureau shall have authority to approve depreciation charges to operating expenses on an interim basis subject to commission prescription prior to the end of January of the year following that in which interim approval is given; (2) approve the release to state public utility commissions such information as the Bureau may obtain during the course of its audit activities which falls within the common interest and jurisdiction of the Commission and the states; (3) act on requests for information file pursuant to the Freedom of Information Act 5 U.S.C. 552, including authority to furnish copies of documents and other records.

(c) Authority concerning section 221(a) of the Act. (1) The Chief, Common Carrier Bureau shall not have authority to determine whether hearings shall be held on applications filed under section 221(a) of the Communications Act of 1934, as amended, where a request has been made by a telephone company, an association of telephone companies, a State Commission or local government authority. (2) The Chief, Common Carrier Bureau shall not have authority to act upon applications filed under Section 221(a) of the Communications Act of 1934, as amended, where the proposed expenditure for consolidation, acquisition or control is in excess of \$10 million. (3) The Chief, Common Carrier Bureau shall not have authority to act upon any application, petition or request under section 221(a) of the Communications Act of 1934, as amended, which presents novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.

(d) Authority concerning tariff regulations. Deleted.

(d) Authority concerning noncommon carrier satellite systems. The Chief, Common Carrier Bureau shall not have authority to determine whether a construction permit shall be granted for a non-common carrier satellite system, or any part thereof, where the construction costs are in excess of \$10 million.

(e) Authority to designate for hearing. The Chief, Common Carrier Bureau shall not have authority to designate for hearing any formal complaints or any applications except: (1) applications for radio facilities filed pursuant to Parts 21, 23 and 25 of this chapter which are mutually exclusive and (2) applications for facilities where the issues presented relate solely to whether the applicant has complied with outstanding precedents and guidelines.

(f) Authority concerning forfeitures. The Chief, Common Carrier Bureau shall not have authority to impose, reduce or cancel forfeitures pursuant to section 203 or section 510 of the Communications Act of 1934, as amended, in amounts of \$10,000 or more.

(g) Authority concerning applications for review. The Chief, Common Carrier Bureau shall not have authority to act upon any applications for review of actions taken by the Chief, Common Carrier Bureau, pursuant to any delegated authority.

(h) Authority concerning remaking and investigatory proceedings. The Chief, Common Carrier Bureau shall not have authority to issue notices of proposed rulemaking, notices of inquiry or to issue reports or orders arising from either of the foregoing.

§0.301 Authority delegated jointly to Chiefs of Common Carrier and Private Radio Bureaus. Authority is delegated jointly to the Chief of the Common Carrier Bureau and the Chief of the Private Radio Bureau to act upon applications involving common carrier matters in the aeronautical mobile service and in the fixed service in Alaska. (for records of actions taken under this section, see §0.337.)

§0.302 Record of actions taken. The application and authorization files in the appropriate central files of the Common Carrier Bureau are designated as the Commission's official records of actions by the Chief, Common Carrier Bureau pursuant to authority delegated to him. In the case of joint authority exercised by the Chief, Common Carrier Bureau and the Chief, Private Radio Bureau, §0.337 applies.

§0.303 Authority concerning registration of telephone terminal equipment. Authority is delegated to the Chief on the Common Carrier Bureau jointly in cooperation with the Chief Scientist to act upon applications for registration of equipment to be directly connected to the telephone network: provided, however, that the Chief, Common Carrier Bureau shall exercise overall policy direction of the program, with appropriate consultation with the Chief Scientist. (For record of action taken under this section, see §0.247).

FIELD OPERATIONS BUREAU

0.311 Authority delegated. The performance of functions and activities described in 0.111 is delegated to the Chief, Field Operations Bureau, provided that

- (a) The following matters shall be referred by the Chief, Field Operations Bureau to the Commission en banc for disposition:
- (1) Notices of proposed rule making and of inquiry and final orders in rule making proceedings, inquiry proceedings, and non-editorial orders making rule changes with respect to Parts 13 and 17 of this chapter. (See 0.231(d).)
 - (2) Applications for review of actions taken pursuant to delegated authority. See 1.115 of this chapter.
 - (3) Petitions and other requests for waiver of Commission rules, whether or not accompanied by an application, when such petitions or requests contain new or novel arguments, not previously considered by the Commission, or present facts or arguments which appear to justify a change in Commission policy.
 - (4) Petitions and other requests for declaratory ruling, when such petitions or requests contain new or novel arguments not previously considered by the Commission, or present facts or arguments which appear to justify a change in Commission policy.
 - (5) Any other petition, pleading, or request presenting new or novel questions of fact, law or policy, which cannot be resolved under outstanding precedents and guidelines after consultation with appropriate Bureaus or Offices.
 - (6) Any other complaint or enforcement matter presenting new or novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines after consultation with appropriate Bureaus or offices.

(b) The Chief and the Deputy Chief of the Field Operations Bureau are authorized to declare that a state of general communications emergency exists and to act on behalf of the Commission pursuant to the provision of 97.107 of this chapter with respect to the operation of amateur stations during a state of general communications emergency.

(c) Rulings and orders concerning radio operator matters in a hearing status shall not be made by the Chief, Field Operations Bureau.

(d)(1) The Chief of the Field Operations Bureau is authorized to issue notices of apparent liability, final forfeiture orders and orders cancelling or reducing forfeitures, pursuant to §1.80 of this chapter, if the amount set out in the notice of apparent liability is \$10,000 or less in the case of a broadcast licensee and \$2,000 or less in any other instance. The scope of the Field Operations Bureau's authority to take such actions includes cases of violation of section 301 or 318 of the Communications Act, or Part 13 or 17 of this chapter and any other rule parts or sections specified in statements of policy provided by the other bureaus and offices available for inspection in the Field Operations Bureau. The Chief of the Field Operations Bureau is authorized to further delegate this authority to Engineers in Charge of field installations.

(2) The Chief of the Field Operations Bureau is authorized to issue citations pursuant to 1.80(d) of this chapter and to further delegate this authority to Engineers in Charge of field installations.

(e) The Chief of the Field Operations Bureau is authorized to make determinations and notifications of the presence of harmful interference to radio communications involving safety of life or protection of property which requires temporary suspension of operation under Section 74.23 of this Chapter. Upon invoking the authority granted pursuant to this section, the Chief of the Field Operations Bureau shall immediately inform the Chairman of the Commission.

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0.314 Additional authority delegated. The Engineer in Charge at each installation is delegated authority to act upon applications, requests, or other matters, which are not in hearing status, and direct the following activities necessary to conduct investigations or inspections:

(a) For new, modified replacement, duplicate or renewal commercial radio operator license and provisional radio operator certificate.

(b) Reserved.

(c) On informal requests from broadcast stations to extend temporary authority for operation without monitors, plate ammeter, plate voltmeter, base current meter, common point meter, and transmission line meter from FM and television stations.

(d) Relating to the time within which an applicant for amateur or commercial radio operator license may take an examination after having failed a previous examination (13.27 and 97.33 of this chapter).

(e)(1) For periodic survey as required by section 385 of the Communications Act of 1934, as amended, and issuance of Communications Act radiotelephony certificated in accordance with 83.512 of this chapter.

(2) Extend the Communications Act Safety Radiotelephony Certificate for a period of up to 90 days beyond the specified expiration date.

(3) Grant emergency exemption requests, extensions or waivers of inspection to ships in accordance with applicable provisions of the Communications Act, the Safety Convention, the Great Lakes Agreement or the Commission's rules.

(f) Applications, in any acceptable form, filed at Commission field offices located in Alaska, for special temporary operator license authorization, in lieu of regular commercial radio operator license, when it is shown that there is a need for such authorization for use in connection with the protection of life or property during an emergency period.

(g) To act on and make determinations on behalf of the Commission regarding requests for reassignment of restoration priority levels and assignment of new restoration priorities concerning the restoration in emergencies of common carrier-provided intercity private line service pursuant to Appendix A of Part 64 of the Commission's rules when, for any reason, the Commission's Emergency Communications Division cannot be contacted.

(h) Require special equipment and program tests during inspections or investigations to determine compliance with technical requirements specified by the Commission.

(i) Require stations to operate with pre-sunrise and nighttime facilities during daytime hours in order that an inspection or investigation may be made by an authorized Commission representative to determine operating parameters.

(j) For ship radio inspection and certification of the ship radio license, pursuant to the requirements of section 362(b) of the Communications Act of 1934, as amended.

(k) Issuance of a Safety Radiotelegraphy Certificate or a Safety Radiotelephony Certificate in accordance with the terms of Regulations 12 and 13, Chapter I, of the Safety Convention.

(l) For inspection or periodic survey as required by Article 11 of the Great Lakes Agreement and certification prescribed by Articles 12 and 13 thereof.

(m) Issuance of notices and orders to operators of industrial, scientific, and medical (ISM) equipment, as provided in 18.115 of this chapter.

(n) Requests for permission to resume operation of ISM equipment on a temporary basis, as provided by 18.115 of this chapter, and requests for extensions of time within which to file final reports, as provided by 18.117 of this chapter.

(o) Reserved.

(p) To act on requests for a waiver of the English language provisions of 13.22 and 13.23 in this chapter in the case of Spanish-speaking applicants in and around Puerto Rico and Miami, Florida, and to issue licenses bearing appropriate restrictions to those applicants found qualified.

(q) Act on requests for waiver of the written examination requirements of 13.21, .22 and .23 of this Chapter and to authorize oral examination in lieu thereof.

(r) To act on requests by blind applicants to appear at the appropriate field office for a radiotelephone license examination. (See 13.11 and 13.23 of this chapter).

(s), (t) and (u) reserved.

~~(v) To issue Interim Amateur Permits to Amateur Radio Service licensees, pursuant to Part 97 of this chapter.~~

(w) To issue Amateur Code Credit Certificated, under the provisions of Part 97 of this chapter.

(x) When deemed necessary by the Engineer-in-Charge of a Commission field facility to assure compliance with the Rules, a station licensee shall maintain a record of such operating and maintenance records as may be necessary to resolve conditions of interference or deficient technical operation.

0.317 Record of action taken. The application, authorization and other appropriate central files of the Field Operations Bureau are designated as the Commission's official records of action taken pursuant to authority delegated under 0.311 and 0.314 and shall constitute the official Commission minutes entry of such actions.

CHIEF, SAFETY AND SPECIAL RADIO SERVICES BUREAU

0.331 Authority delegated. The performance and functions and activities described in 0.131 of this part is delegated to the Chief, Safety and Special Radio Services Bureau, provided that

(a) The following matters shall be referred by the Chief, Safety and Special Radio Services Bureau to the Commission en banc for disposition:

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings, and non-editorial orders making rule changes. (See 0.231(d)).

(2) Petitions for review of actions taken pursuant to delegated authority (See 0.115 of this chapter).

(3) Petitions and other requests for waivers of Commission rules, whether or not accompanied by an application, when such petitions or requests contain new or novel arguments not previously considered by the Commission, or present facts or arguments which appear to justify a change in Commission policy.

(4) Petitions and other requests for declaratory rulings, when such petitions or requests contain new or novel arguments not previously considered by the Commission, or present facts or arguments which appear to justify a change in Commission policy.

(5) Any other petition, pleading, or request presenting new or novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.

(6) Proposed public notices expressing new or novel Commission policy, interpreting the provisions of law, regulations or treaties, or warning licensees in the Safety and Special Radio Services as to certain types of violations.

(7) Proposed U. S. positions to be transmitted to the Department of State for international meetings of telecommunications entities.

(8) Any other complaint or enforcement matter presenting new or novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.

(9) Authority to issue a notice of opportunity for hearing pursuant to 1.80(g) of this chapter; and authority to issue notices of apparent liability, final forfeiture orders and orders canceling or reducing forfeitures imposed under 1.80(f) of this chapter if the amount set out in the notice of apparent liability is \$2000 or more.

(b) Rulings and orders concerning matters in a hearing status shall not be made by the Chief, Safety and Special Radio Services Bureau.

0.332 Actions taken under delegated authority. In discharging the authority conferred by 0.331, the Chief, Private Radio Bureau, shall establish working relationships with other bureaus and staff offices to assure the effective coordination of actions taken in the following areas of joint responsibility:

(a) Complaints arising under section 605 of the Communications Act--Office of General Counsel.

(b) Matters involving international coordination, World Administrative Radio Conferences, U. S. positions and preparation for international meetings of telecommunications entities--Office having primary responsibility for the matter.

(c) Requests for waiver or refund of filing fee--Office of Executive Director and Office of General Counsel.

(d) Requests for waiver of tower painting and lighting specifications--Field Operations Bureau.

(e) Matters involving emergency communications--Office of Executive Director.

(f) Complaints involving equal employment opportunities--Office of General Counsel.

(g) Requests for use of frequencies or bands of frequencies shared with broadcast, common carrier, or government services--Office of Science and Technology and appropriate operating bureau.

(h) Requests involving coordination with other Federal or state agencies or foreign government when appropriate--Office of General Counsel--Office of Chief Engineer or operating bureau.

(i) Reserved.

(j) Proposals involving possible harmful impact on radio astronomy or radio research installations--Office of

0.333 Authority delegated jointly to Chiefs of Common Carrier and Safety and Special Radio Services Bureau. Authority is delegated jointly to the Chief of the Common Carrier Bureau and the Chief of the Safety and Special Radio Services Bureau to act upon applications involving Common Carrier matters in the maritime mobile service, aeronautical mobile service, and in the fixed service in Alaska.

0.334 Additional Authority delegated to the Chief, Safety and Special Radio Services Bureau. Insofar as the operation of the regional center is concerned, the Chief of the Safety and Special Radio Services Bureau is delegated authority to exercise the following functions:

(a) In accordance with applicable rules, authority to act on all applications filed in a region in the Remote Pickup Broadcast Service (shared frequencies only) for construction permits, station licenses, modification of station licenses, renewal of station licenses, and special temporary authorizations.

(b) Except as otherwise provided in 1.61 of this chapter, with respect to the construction, marking and lighting of antenna towers and supporting structures, authority as set forth in Part 17 of this chapter to exercise the functions of the Commission in designated Regions.

§0.337 Record of actions taken. The history card pertaining to a certain station is designated to be the official record of the action taken by the Chief, Safety and Special Radio Services Bureau, in pursuance of the authority delegated to him in §§0.331 and 0.332, or jointly to him and the Chief of the Common Carrier Bureau in §0.333. In cases where no history card is prepared, the application and authorization file pertaining to the station in question is designated to be the official record of the action taken by the Chief of the Bureau, or by him jointly with the Chief of the Common Carrier Bureau.

HEARING EXAMINERS

§ 0.341 Authority of hearing examiner. (a) After a hearing examiner has been designated to preside at a hearing and until he has issued an initial decision or certified the record to the Commission for decision, or the proceeding has been transferred to another hearing examiner, all motions, petitions and other pleadings shall be acted upon by such hearing examiner, except for following:

(1) Those which are to be acted upon by the Commission. See § 1.291(a)(1) of this chapter.

(2) Those which are to be acted upon by the Chief Hearing Examiner under § 0.351 of this chapter.

(b) Any question which would be acted upon by the hearing examiner if it were raised by the parties to the proceeding may be raised and acted upon by the hearing examiner on his own motion.

(c) Any question which would be acted upon by the Chief Hearing Examiner, the Review Board of the Commission, if it were raised by the parties, may be certified by the hearing examiner, on his own motion, to the Chief Hearing Examiner, the Review Board or the Commission, as the case may be.

0.347 Record of actions taken. The official record of all actions taken by an Administrative Law Judge, including initial and recommended decisions and actions taken pursuant to 0.341, is contained in the original docket folder, which is maintained by the Secretary in the Dockets Branch.

CHIEF HEARING EXAMINER

0.351 Authority delegated. The Chief Hearing Examiner shall act on the following matters in proceedings conducted by hearing examiners:

(a) Initial specifications of the time and place of hearings where not otherwise specified by the Commission and excepting actions under authority delegated by 0.296 of this chapter.

(b) Designation of the hearing examiner to preside at hearings.

(c) Orders directing the parties or their attorneys to appear at a specified time and place before the hearing examiner for an initial prehearing conference in accordance with 1.251(a) of this chapter. (The hearing examiner named to preside at the hearing may order an initial prehearing conference although the Chief Hearing Examiner may not have seen fit to do so and may order supplementary prehearing conferences in accordance with 1.251 of this chapter.)

(d) Petitions requesting a change in the place of hearings where the hearing is scheduled to begin in the District of Columbia or where the hearing is scheduled to begin at a field location and all appropriate proceedings at that location have not been completed. (See 1.253 of this chapter).

(e) In the absence of the hearing examiner who has been designated to preside in a proceeding, to discharge the hearing examiner's functions.

(f) All pleadings filed, or matters which arise after a proceeding has been designated for hearing, but before an examiner has been designated, which would otherwise be acted upon by the examiner, including all pleadings filed, or matters which arise, in cease and desist and/or revocation proceedings prior to the designation of a presiding officer.

(g) All pleadings (such as motions for extension of time) which are related to matters to be acted upon by the Chief Hearing Examiner.

(h) If the administrative law judge designated to preside at a hearing becomes unavailable, to order a rehearing or to order that the hearing continue before another administrative law judge and, in either case, to designate the judge who is to preside.

0.357 Record of actions taken. The official record of all actions taken by the Chief Administrative Law Judge in docketed proceedings pursuant to 0.351 is contained in the original docket folder, which is maintained by the Secretary in the Dockets Branch.

REVIEW BOARD

0.361 (a) The Review Board is constituted pursuant to section 5(d)(1) of the Communications Act of 1934, as amended, to review decisions of the Administrative Law Judges in all adjudicative proceedings unless at the time of designation, the Commission specifies otherwise. The Board shall also perform those functions set forth in sections 0.362 of this Part and any additional duties assigned by the Commission not inconsistent with these functions.

(b) The Board is composed of three or more Commission employees. Members of the Board are designated by the Commission, serve indefinitely on a full-time basis, and are responsible only to the Commission. Neither the Commission nor any of its members will discuss the merits of any matter pending before the Board with the Board or any of its members.

(c) Two members of the Board shall constitute a quorum. The Board may sit in panels of two members. Any member assigned to a case who is not present at oral argument may, after reading the transcript of oral argument, participate in the Board's decision. However, so far as practicable, all of the members of the Board assigned to a case shall hear oral argument. In the case of a tie vote, a member of the Board not recused may review the record and vote; if a third member is not available, the case shall be certified to the Commission for decision.

(d) The member of the Board designated as Chairman by the Commission shall assign panels and cases on a rotational basis to the extent practicable. Each opinion of the Review Board will be signed by one of its members, who shall be responsible for its preparation.

0.362 Action on initial decisions. (a) The Review Board shall decide each matter before it by majority vote in accordance with the Communications Act of 1934, as amended, rules and regulations, case precedent, and established policies of the Commission. In reviewing initial decisions referred to it, the Review Board is authorized to perform all of the review functions which would otherwise have been performed by the Commission under Sections 1.273 through 1.282 of this chapter.

(b) The Board shall adopt a decision within 180 days after the release date of an Initial Decision to which exceptions are taken; provided, however, that where, for good cause shown, extensions of time are requested by the parties and granted, the 180 days shall be extended likewise. If the Board does not adopt a decision before the appropriate date, any party may file a motion with the Commission for certification of the case for decision.

0.363 Certification of matters to the Commission. (a) The Review Board, on its own motion or upon motion to the Board by any party, may in its discretion certify any matter to the Commission with a request that the Commission act upon the matter. The Commission may act upon the matter or remand it to the Board for decision.

(b) Whenever the Commission determines that a matter pending before the Board involves a novel issue of law or policy, it may, on its own motion, direct that the matter before the Board be certified to the Commission for decision. However, no petition requesting the Commission to take such action will be entertained.

0.365 Authority delegated. (a) The Review Board is delegated general authority to take such action as may be necessary to perform those duties specified in Sections 0.361 through 0.363 of this Part.

(b) The Review Board is delegated specific authority in all adjudicative cases to act on exceptions to initial or summary decisions, appeals from other rulings of Administrative Law Judges pursuant to Sections 1.301 and 1.302 of this chapter, and all related pleadings filed in cases or matters which are before the Board.

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(c) Reserved.

(d) Actions on pleadings filed in cases or matters which are before the Board. The Review Board shall act on all pleadings filed in cases or matters which are before the Board.

0.367 Records of actions taken. The official record of all actions taken by the Review Board pursuant to 0.361 or 0.365 is contained in the original docket folder, which is maintained by the Secretary in the Dockets Branch.

DEFENSE AND EMERGENCY PREPAREDNESS DELEGATIONS

§0.381 Defense Commissioner. The authority delegated to the Commission under Executive Order 11490 redelegated to the Defense Commissioner.

§0.383 Emergency Relocation Board. (a) During any period in which the Commission is unable to function because of the circumstances set forth in §0.186(a), all work, business or functions of the Federal Communications Commission arising under the Communications Act of 1934, as amended, is assigned and referred to the Emergency Relocation Board.

(b) The Board, acting by a majority thereof shall have the power and authority to hear and determine, order, certify report or otherwise act as to any of the said work, business, or functions so assigned or referred to it, and in respect thereof shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations.

(c) Any order decision or report made or other action taken by the said Board in respect of any matters so assigned or referred shall have the same effect and force, and may be made, evidenced, and enforced in the same manner, as if made or taken by the Commission.

§0.387 Other defense and emergency preparedness delegations; cross reference. (a) For authority of the Chief of the Broadcast Bureau to issue National Defense Emergency Authorizations, see §§0.281(h) and 1.502.

(b) For authority of the Chief and Deputy Chief of the Field Engineering Bureau to declare a general communications emergency, see §0.311

SUBPART C - GENERAL INFORMATION

§0.401 Location of Commission Offices: - (a) The main offices of the Commission are located in the New Post Office Building, 13th Street and Pennsylvania Avenue, N. W., Washington, D. C., and in the 521 Building, 521 12th Street, N. W., Washington, D.C.

(1) Documents submitted to these offices by mail should be addressed to: Federal Communications Commission, Washington, D.C., 20554

(2) Hand-carried applications accompanied by a filing fee should be delivered to: Fees Section, Office of Executive Director, 1919 M Street, N.W., Washington, D.C.

(3) Other hand-carried documents should be delivered to: The Secretary's Office, 1919 M Street, N.W., Washington, D.C.

(b) The Commission's laboratory is located north of Laurel, Maryland. The mailing address is: FCC Laboratory, Box 40, Laurel, Md., 20810.

(c) The locations of field offices of the Field Operations Bureau are listed in §0.121.

(d) The locations of field offices of the Common Carrier Bureau are listed in §0.94(b).

(e) The Commission also maintains an office at Gettysburg, Pennsylvania. The mailing address for this office is: Federal Communications Commission, 334 York Street, Gettysburg, Pa., 17325. The Telecommunications Section of Finance Branch: FCC, P.O. Box IT-70, Gettysburg, Pa. 17325.

(f) The location of the field offices of the Office of Emergency Communications are listed in §0.184(c).

(g) A Regional Spectrum Management Center is located in Chicago, Illinois: The mailing address for this office is:

Federal Communications Commission
Regional Spectrum Management Center
219 South Dearborn Street
Chicago, Illinois, 60604

§0.403 Office hours. The main offices of the Commission are open from 8 a.m. to 5:30 p.m. Monday through Friday, excluding legal holidays.

§0.405 Statutory provisions. The following statutory provisions, among others, will be of interest to persons having business with the Commission:

(a) The Federal Communications Commission was created by the Communications Act of 1934, 48 Stat. 1064, June 19, 1934, as amended, 47 U.S.C. 151-609.

(b) The Commission exercises authority under the Submarine Cable Landing Act, 42 Stat. 8, May 27, 1921, 47 U.S.C. 34-39. See Section 5 of Executive Order 10530, 19 F.R. 2709, May 10, 1954, as amended, 3 CFR 165 ed., p. 463.

(c) The Commission exercises authority under the Communications Satellite Act of 1962, 76 Stat. 419, August 31, 1962, 47 U.S.C. 701-744.

(d) The Commission operates under the Administrative Procedure Act 60 Stat. 237, June 11, 1946, as amended, originally codified as 5 U.S.C. 1001-1011. Pursuant to P.L. 89-554, September 6, 1966, 80 Stat. 378, the provisions of the Administrative Procedure Act now appear as follows in the Code:

Administrative
Procedure Act

5 U.S.C.

Sec. 2-9 ----- 551-558
 Sec. 10 ----- 701-706
 Sec. 11 ----- 3105, 7521, 5362, 3344, 1305
 Sec. 12 ----- 559

§0.406 The rules and regulations. Persons having business with the Commission should familiarize themselves with those portions of its rules and regulations pertinent to such business. All of the rules have been published and are readily available. See §§0.411(b), 0.412, and 0.415. For the benefit of those who are not familiar with the rules, there is set forth in this section a brief description of their format and contents.

(a) **Format.** The rules are set forth in the Code of Federal Regulations as Chapter I of Title 47. Chapter I is divided into parts numbered from 0-99. Each part, in turn, is divided into numbered sections. To allow for the addition of new parts and sections in logical sequence, without extensive renumbering, parts and sections are not always numbered consecutively. Thus, for example, Part 2 is followed by Part 5, and §1.8 is followed by §1.10; in this case, Parts 3 and 4 and §1.9 have been reserved for future use. In numbering sections, the number before the period is the part number; and the number after the period locates the section within that part. Thus, for example, §1.1 is the first section of Part I and §5.1 is the first section in Part 5. Except in the case of accounting regulations (Parts 31-35), the period should not be read as a decimal point; thus, §1.511 is not located between §§1.51 and 1.52 but at a much later point in the rules. In citing the Code of Federal Regulations, the citation, 47 CFR 5.1, for example, is to §5.1 (in Part 5) of Chapter I of Title 47 of the Code, and permits the exact location of that rule. No citation to other rule units (e.g., subpart or chapter) is needed.

(b) **Contents.** Parts 0-19 of the rules have been reserved for provisions of a general nature. Parts 20-69 have been reserved for provisions pertaining to common carriers. Parts 70-79 have been reserved for provisions pertaining to broadcasting and cable television.

Parts 80-99 have been reserved for provisions pertaining to the Safety and Special Radio Services. In the rules pertaining to common carriers, Parts 21, 23, and 25 pertain to the use of radio; Parts 31-66 pertain primarily to telephone and telegraph companies. In the rules pertaining to broadcasting, Part 74, Experimental, auxiliary and special broadcast services, also contains provisions for regulation of community antenna television (CATV) systems and community antenna relay (CAR) stations. Persons having business with the Commission will find it useful to consult one or more of the following parts containing provisions of a general nature in addition to the rules of the radio or wire communication service in which they are interested:

- (1) Part 0, Commission organization. Part 0 describes the structure and functions of the Commission, lists delegations of authority to the staff, and sets forth information designed to assist those desiring to obtain information from, or to do business with, the Commission. This Part is designed, among other things, to meet certain of the requirements of the Administrative Procedure Act, as amended.
- (2) Part 1, practice and procedure. Subpart A of Part 1 contains the general rules of practice and procedure. Except as expressly provided to the contrary, these rules are applicable in all Commission proceedings and should be of interest to all persons having business with the Commission. The subpart also contains certain other miscellaneous provisions. Subpart B contains the procedures applicable in formal hearing proceedings (see §1.201). Subpart C contains the procedures followed in making or revising the rules and regulations. Subpart D contains rules applicable to applications for licenses in the Broadcast Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Subpart E contains general rules and procedures applicable to common carriers. Additional procedures applicable to certain common carriers by radio are set forth in Part 21, Subpart F contains rules applicable to applications for licenses in the Safety and Special Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Subpart G contains rules pertaining to application filing fees. Subpart H, concerning ex parte presentations, sets forth standards governing communication with Commission personnel in hearing proceedings and contested application proceedings. Subparts G and H will be of interest to all applicants, and Subpart H will, in addition, be of interest to all persons involved in hearing proceedings.
- (3) Part 2, frequency allocations and radio treaty matters; general rules and regulations. Part 2 will be of interest to all persons interested in the use of radio. It contains definitions of technical terms used in the rules and regulations; provisions governing the allocation of radio frequencies among the numerous uses made of radio (e.g., broadcasting, land mobile) and radio services (e.g., television, public safety), including the Table of Frequency Allocations (§2.106); technical provisions dealing with emissions; provisions dealing with call signs and emergency communications; provisions governing type acceptance and type approval of radio equipment; and a list of treaties and other international agreements pertaining to the use of radio.
- (4) Part 5, experimental radio services (other than broadcast). Part 5 deals with the temporary use of radio frequencies for research in the radio art, for communication involving other research projects, and for the development of equipment, data, or techniques.
- (5) Part 13, commercial radio operators. Part 13 describes the procedures to be followed in applying for a commercial operator license, including the forms to be used and the examinations given, and sets forth rules governing licensed operators.

It will be of interest to applicants for such licenses, licensed operators, and the licensees of radio stations which may be operated only by persons holding a commercial radio operator license.

(6) Part 15, radio frequency devices. Part 15 contains regulations designed to prevent harmful interference to radio communication from radio receivers and other devices which radiate radio frequency energy, and provides for the certification of radio receivers. It also provides for the certification of low power transmitters and for the operation of certificated transmitters without a license.

(7) Part 17, construction, marking, and lighting of antenna structures. Part 17 contains criteria for determining whether applications for radio towers require notification of proposed construction to the Federal Aviation Agency, and specifications for obstruction marking and lighting of antenna structures.

(8) Part 18, industrial, scientific and medical equipment. Part 18 contains regulations designed to prevent harmful interference to radio communication from ultrasonic equipment, industrial heating equipment, medical diathermy equipment, radio frequency stabilized arc welders, and other equipment which uses radio energy for purposes other than communication.

(9) Part 19, employee responsibilities and conduct. Part 19 prescribes standards of conduct for the members and staff of the Commission.

PRINTED PUBLICATIONS

§0.411 General reference materials. The following reference materials are available in many libraries and may be purchased from the Superintendent of Documents. U. S. Government Printing Office, Washington, D. C. 20402:

(a) Statutory materials. Laws pertaining to communications are contained in Title 47 of the United States Code. Laws enacted since the printing of the last supplement to the Code are printed individually as slip laws, and these are compiled chronologically in the United States Statutes at Large. The Acts of Congress from 1910-62 pertaining to radio have been compiled in a single volume, Radio Laws of the United States (1962 ed.). See §§0.405 and 0.414.

(b) Regulatory materials--(1) The Code of Federal Regulations. The rules and regulations of the Commission are contained in Chapter I of Title 47 of the Code of Federal Regulations. Chapter I is divided into the following 4 subchapters, which may be purchased separately: Subchapter A--General; Subchapter B--Common Carrier Services; Subchapter C--Broadcast Radio Services; and Subchapter D--Safety and Special Radio Services. Most persons will find that they need Subchapter A, containing the general rules, and one of the other volumes, depending upon their area of interest. These four volumes are revised annually to reflect change in the rules. See §§0.406, 0.412, and 0.415. The Code of Federal Regulations is fully indexed and contains numerous finding aids. See 1 CFR Appendix C.

(2) The Federal Register. As rules are adopted, amended or repealed, the changes are published in the Federal Register, which is published daily except on legal holidays. Notices of proposed rule making, other rule making documents, statements of general applicability and other Commission documents having general applicability and legal effect are also published in the Federal Register. Summaries of the full Notices of proposed rule making and other rule making decisions adopted by the Commission constitute rulemaking documents for purposes of Federal Register publication. The Federal Register is fully indexed and contains numerous findings aids.

§0.413 The Commission's printed publications. The Commission's printed publications are described in §§0.414-0.420. These publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D. C. 20402. The Commission does not furnish copies of these publications but will furnish a price list (Administration Bulletin No. 1) upon request. Requests for copies of that list should be directed to the **Public Information Division, Federal Communications Commission, Washington, D. C. 20554.**

§0.414 The Communications Act and other statutory materials. This publication, with packets of revised pages, contains the Communications Act of 1934, with amendments through 1964; the Administrative Procedure Act, with amendments through 1964; the Judicial Review Act; the Communications Satellite Act of 1962; and selected sections of the Criminal Code pertaining to communications. It also contains indexes to the Communications Act and the Administrative Procedure Act. Persons who do not have ready access to the United States Code, or who refer frequently to these materials, may find this volume to be useful.

§0.415 The rules and regulations (loose-leaf service). In this service, the rules and regulations are divided into 10 volumes, each containing several related parts. Each volume may be purchased separately from the Superintendent of Documents. The purchase price for a volume includes a subscription to replacement pages reflecting changes in the rules contained therein until such time as the volume is revised. Each volume is revised periodically, depending primarily on the frequency with which the rules it contains have been amended. When a volume is revised, the revised volume and replacement pages therefor will be furnished to those who renew their subscriptions.

0.416 The Federal Communications Commission Reports. All documents adopted by the Commission having precedential or historical significance that are not published in a nationally distributed, comprehensive reporter of FCC decisions are published in the FCC Reports. The FCC Reports are published monthly in pamphlet form. The pamphlets are available on a subscription basis. Earlier volumes contain Commission decisions and reports but are less comprehensive than those currently being published. Supplements (to those earlier volumes) containing additional documents having precedential or historical significance will be issued from time to time. Current bound volumes contain indexes, tables of cases and other findings aids.

§0.417 The Annual Reports. At the end of each fiscal year, the Commission publishes an Annual Report containing general information concerning the Commission and the history of regulation, a summary of developments during the year, and selected industry statistics.

80.420 Other Commission publications. The following additional Commission publications may be purchased from the Superintendent of Documents:

- (a) Statistics of Communications Common Carriers (for the year 1965).
- (b) Study Guide and Reference Material for Commercial Radio Operator Examinations (May 1965).
- (c) Figure M-3, Estimated AM Ground Conductivity of the United States (set of two maps).
- (d) Television Network Program Procurement Report, 2d Interim Report, Part 2, by the Office of Network Study.

FORMS AND DOCUMENTS AVAILABLE UPON REQUEST

80.421 Application forms. All forms for use in submitting applications for radio authorizations, together with instructions and information as to filing such forms, may be obtained at the Washington offices of the Commission or at any of the field offices listed in 80.121. For information concerning the forms to be used and filing requirements, see subparts D, E, F, and G of Part 1 of this chapter and the appropriate substantive rules.

0.422 Disclosure to other federal government agencies of information submitted to the Commission in confidence. (a) The disclosure of records to other federal government agencies is generally governed by 44 U.S.C. 3512 and 3508(a) rather than the Freedom of Information Act. The acceptance of materials in confidence under 0.457 or 0.459 does not provide assurance against their disclosure to other agencies.

(b) Information submitted to the Commission in confidence pursuant to 0.457(c)(2) and (3), (d) and (g) or 0.459 will be disclosed to other agencies of the federal government upon request: PROVIDED (1) specific Commission assurances against such disclosure have not been given, (2) the other agency has established a legitimate need for the information, (3) disclosure is made subject to the provisions of 44 U.S.C. 3508(a), and (4) disclosure is not prohibited by the Privacy Act or other provisions of law.

(c) The Commission's staff may give assurances against disclosure of information to other federal agencies only with the prior written approval of the General Counsel. In no event will assurance against disclosure to other agencies be given in advance of submission of the information to the Commission if submission is required by statute or by the provisions of this chapter; but the notice provisions of paragraph (d) of this section will apply to such information.

(d)(1) Except as provided in subparagraph (2) of this paragraph a party who furnished records to the Commission in confidence will be notified at the time that the request for disclosure is submitted and will be afforded 10 days in which to oppose disclosure.

(2) If the agency requesting the records states to the satisfaction of the Commission that notice to the party who furnished the records to the Commission will interfere unduly with its law enforcement activities and further states that it will notify that party of the Commission's disclosure once the potential for such interference is eliminated, the Commission will not give notice of disclosure.

(3) If notice is given to the party who furnished the records to the Commission in confidence and disclosure is not opposed, the staff is authorized to make the records available to the agency which requested them.

(4) If disclosure is opposed and the Commission decides to make the records available to the other agency, the party who furnished the records to the Commission will be afforded ten (10) working days from the date of the ruling in which to move for a judicial stay of the Commission's action. If he does not move for stay within this period, the records will be disclosed.

(e) Nothing in this section is intended to govern disclosure of information to Congress

§0.423 Information bulletins. A number of bulletins containing information about communications and the Federal Communication Commission have been prepared by the Commission for distribution to the public. A listing of these bulletins is included in ED Bulletin No. 1, "FCC Publications". Requests for bulletins should be directed to the Press and News Division.

(a) Copies of the following information bulletins issued by the Commission are available in the Office of Reports and Information and will be furnished upon request.

- (1) An A-B-C of the FCC (No. 3-G).
- (2) Radio Stations and Other Lists (No. 4-G).
- (3) Publications and Services (No. 6-G).
- (4) A Short History of Electrical Communication (No. 7-G).
- (5) Radio Station Call Signs (No. ~~11-G~~).
- (6) Regulation of Wire and Radio Communication (No. 14-G).
- (7) Frequency Allocation (No. 15-G).
- (8) Memo to All Young People Interested in Radio (No. 17-G).
- (9) Letter to a Schoolboy (No. 18-G).
- (10) Policing the Airwaves and Other FCC Field Services (No. 19-G).
- (11) Broadcast Application and Hearing Procedures (No. 1-B).
- (12) Broadcast Primer (No. 2-B).
- (13) Educational Television (No. 16-B).
- (14) Subscription TV and the FCC (No. 20-B).
- (15) Educational Radio (No. 21-B).

- (16) Common Carrier Primer (No. 12-C).
- (17) Safety and Special Radio Services Primer (No. 11-S).

(b) Copies of the following information bulletins issued by the Office of Chief Engineer are available in that office and will be furnished upon request:

- (1) Type Approved Miscellaneous Equipment (OCE Bull. No. 5).
- (2) Type Approved Medical Diathermy Equipment (OCE Bull. No. 7).
- (3) Industrial Radio Frequency Heaters Require Periodic Inspection (OCE Bulletin No. 8).
- (4) Attachments to Type Approved Equipment Illegal (OCE Bulletin No. 10).
- (5) Does My Transmitter Need a License (OCE Bulletin No. 11).
- (6) Operation in the Broadcast Band Without a License (OCE Bulletin No. 12).
- (7) Type Approved Wireless Microphones and Telemetering Transmitters (OCE Bulletin No. 13).
- (8) Editorial Revision of FCC Rules, Parts 15 and 18 (OCE Bulletin No. 14).
- (9) Type Acceptance Program (OCE Bulletin No. 15).

(c) Copies of the following information bulletins issued by the Safety and Special Radio Services Bureau are available from the Office Services Division, Office of Executive Director, upon request:

- (1) Citizens Radio Service (SS Bulletin No. 1001).
- (2) Use of Citizens Radio by Telephone Answering Services and Similar Organizations (SS Bull. No. 100ld).
- (3) Citizens Radio Service-Selecting Class C and Class D Station Equipment (SS Bulletin No. 100lg).
- (4) Aircraft Radio Station (SS Bulletin No. 1002).
- (5) Aeronautical Advisory Stations (SS Bulletin No. 1002a).
- (6) Aeronautical Public Service Stations (SS Bulletin No. 1002c).
- (7) Amateur Radio Service (SS Bulletin No. 1003).
- (8) Amateur Radio Operation Away from the Licensed Location (SS Bulletin No. 1003b).
- (9) International Amateur Radio-communication (SS Bulletin No. 1103c).
- (10) Assignment of Amateur Radio Station Call Signs (SS Bulletin No. 1003d).
- (11) Renewal of Amateur Radio Licenses (SS Bulletin No. 1003e).
- (12) Reciprocal Amateur Operation (SS Bulletin No. 1003f).
- (13) Land Transportation Radio Services (SS Bulletin No. 1004).
- (14) Industrial Radio Services (SS Bulletin No. 1005).
- (15) Use of the Same Transmitting Equipment by More than One Station Licensee in the Public Safety, Industrial and Land Transportation Services (SS Bulletin No. 1006a).
- (16) Ship Radiotelephone and Radio (SS Bulletin No. 1007).
- (17) Public Safety Radio Services (SS Bulletin No. 1009).
- (18) Study Questions for Amateur Novice Class Examination (SS Bulletin No. 1035).
- (19) Mutual Recognition of Certain Mobile and Amateur Radio Licenses Issued by the United States or Canada (SS Bulletin No. 1065).
- (20) Notice to Licensees and Operators of Land Mobile Radio Stations (SS Bulletin No. 1097).

LISTS CONTAINING INFORMATION COMPILED BY THE COMMISSION

LISTS CONTAINING INFORMATION
COMPILED BY THE COMMISSION

0.431 The FCC Service Frequency Lists. Lists of frequency assignments to radio stations authorized by the Commission are recapitulated periodically by means of an automated record system. All stations licensed by the Commission are included, except the following: Aircraft, amateur, personal (except General Mobile Radio Service), Civil Air Patrol, and disaster. The resulting documents, the FCC service frequency lists, consist of several volumes arranged by nature of service, in frequency order, including station locations, call signs and other technical particulars of each assignment. These documents are available for public inspection at each of the Commission's Field Operations Bureau field offices (see 0.121) and, in Washington, D.C., in the Office of Science and Technology. Copies may be purchased from the Commission's duplicating contractor. See 0.465(a).

0.433 The Radio Equipment Lists. Lists of type approved and type accepted equipment (the radio equipment lists) are prepared periodically by the Commission. These documents are available for public inspection at each of the Commission's Field Operations Bureau field offices (see 0.121) and in the Office of Science and Technology. Copies may be purchased from the Commission's duplicating contractor. See 0.465(a).

0.434 Lists of authorized broadcast stations and pending broadcast applications. Periodically the FCC prepares lists containing information about authorized broadcast stations, pending applications for such stations, and rulemaking proceedings involving amendments to the Table of Assignments. These lists, which are prepared from the FCC's engineering data bases, contain frequencies, station locations, and other particulars. They are available for public inspection at the FCC's Public Reference Room, Washington, D. C. Copies of the lists may be purchased from the FCC's duplicating contractor. See 0.465(a). Copies of the data bases may be obtained from: National Technical and Information Service, Springfield, Virginia 22161, (703) 557-4660.

- (a) For AM broadcast stations, the lists are arranged as follows:
- (1) Pending construction permit applications for new stations and changes in existing facilities. There is one list arranged by frequency, one by state and city, and one by file number. Complete lists are prepared approximately every two weeks.
 - (2) There is currently no list of authorized stations available.
- (b) For FM broadcast stations, the lists are arranged as follows:

(1) Authorized stations, pending construction permit applications, proposed rulemakings, vacant channels, and translators. There is one list available by state and city, and another list by frequency. Complete lists are prepared approximately once a month with updates each week.

(2) Vacant assignments and applications therefor. The list is in order by state and city. Complete lists are prepared approximately once a month; there are no updates.

(c) For TV stations, the lists are arranged as follows:

(1) Authorized stations, pending construction permit applications, proposed rulemakings, and vacant channels in order of state and city. A complete list is prepared approximately once a month, with updates approximately each week.

(2) Vacant assignments and applications therefor. The list is in order by state and city. Complete lists are prepared approximately once a month; there are no updates.

(d) For TV broadcast translator stations, the lists contain authorized stations and pending construction permit applications for new stations and changes in existing facilities. There is one list arranged in order by state, city, and channel; and another list arranged in order by state, channel, and call. Complete lists are prepared approximately once a month, with updates each week.

(e) Users of the lists are cautioned that the data bases are unofficial listings. They have been prepared for the convenience of the FCC's staff, and should not be relied on by the public because in some instances the lists may not agree with the primary sources of information (e.g., official license documents, international notifications, actual applications, and the like). Action by the public, such as the filing of applications, should be based on the primary sources of information and not on the lists. If there are discrepancies between the lists and the primary sources of information the latter control. Any error discovered in the lists should be brought to the attention of: Federal Communications Commission, Broadcast Bureau - Data Base Management Staff, Washington, D. C. 20554.

(f) The United States and its officers, agents and employees shall not be responsible or liable for any loss, expense or damage arising from or incident to the use of the lists by the public.

PUBLIC INFORMATION AND INSPECTION OF RECORDS

§0.441 General. Any person desiring to obtain information may do so by writing or coming in person to any of the Commission's offices. A broader range of information and more comprehensive information facilities are available at the Commission's main office in Washington, D.C., however, and inquiries of a general nature should ordinarily be submitted to that office.

§0.443 General information office. The Public Information Officer is located at 1919 M Street, N.W., Washington, D.C. Here the public may obtain copies of public notices of Commission actions, formal documents adopted by the Commission and other public releases as they are issued. Back issues of public releases are available for inspection in this office. Copies of fact sheets which answer general questions about the Commission may be obtained from this office.

§0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.

(a) All opinions and orders of the Commission (including concurring and dissenting opinions) are mailed to the parties and, as part of the record, are available for inspection in accordance with §§0.453 and 0.455.

(b) All final decisions and other documents currently adopted by the Commission having precedential or historical significance are published in the FCC Reports or Pike and Fischer Radio Regulations.

(c) All rulemaking documents are published in the Federal Register. Summaries of the full Notices of proposed rule making and other rule making decisions adopted by the Commission constitute rulemaking documents for purposes of Federal Register publication. See 1.412(a)(1). The Complete text of the Commission decision also is released by the Commission and is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C. or as otherwise specified in the rulemaking document published in the Federal Register. The complete text of rulemaking decisions may also be purchased from the Commission's duplicating contractor.

(d) Formal policy statements and interpretations designed to have general applicability and legal effect are published in the Federal Register and the FCC Reports. See §§0.411(b)(2) and 0.416. Commission decisions and other Commission documents not entitled formal policy statements or interpretations may contain substantive interpretations and statements regarding policy, and these are published as part of the document in the FCC Reports. General statements regarding policy and interpretations furnished to individuals, in correspondence or otherwise, are not ordinarily published. A series of individual interpretations may be collected and published in the Federal Register, Pike and Fischer or the FCC Report.

(e) If the documents described in paragraphs (a)-(d) of this section are published in the Federal Register, the FCC Reports, or Pike and Fischer Radio Regulations, they may be relied upon, used or cited as precedent by the Commission or private parties in any matter. If they are not so published, they may not be relied upon, used or cited as precedent, except against persons who have actual notice of the document in question or by such persons against the Commission. No person is expected to comply with any requirement or policy of the Commission unless he has actual notice of that requirement or policy or unless a document stating it has been published as provided in this paragraph. Nothing in this paragraph, however, shall be construed as precluding a reference to the rationale set forth in a recent document which is pending publication if the requirement or policy to which the rationale relates is contained

in a published document or if actual notice of that requirement or policy has been given.

(f) The Federal Register, the FCC Reports, and Pike and Fischer Radio Regulations are indexed. If the documents described in paragraphs (a)-(d) of this section are not published, they are neither indexed nor relied upon, except as provided in paragraph (e) of this section.

(g) There are two Commission staff manuals, the FCC Administrative Manual and the FOB Manual. The FCC Administrative Manual (excepting Part LX, concerning Civil Defence, which contains materials classified under E.O. 10501) is available for inspection in the office of the Executive Director. Portions of the FOB Manual which pertain to administrative matters are available for inspection in the Field Operations Bureau. Portions of the FOB Manual which pertain to enforcement matters are not available for inspection. The manuals are not indexed but are organized by subject, with tables of contents, and the materials contained therein can be located without difficulty.

(h) Subparts A and B of this part describe the functions of the staff and list the matters on which authority has been delegated to the staff. Except as provided in paragraph (g) of this section, all general instructions to the staff and limitations upon its authority are set forth in those subparts. As part of the Commission's rules and regulations, the provisions of these subparts are indexed in the Federal Register and the Code of Federal Regulations, Instructions to the staff in particular matters or cases are privileged and are not published or made available for public inspection.

(i) To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Commission may delete identifying details when it makes available or publishes any document described in this section. The justification for any such deletion will be fully explained in a preamble to the document.

0.451 Inspection of records: Generally. (a) Records which are routinely available for public inspection. Sections 0.453 and 0.455 list those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Procedures governing requests for inspection of such records are set out in 0.460.

(b) Records which are not routinely available for public inspection. Records which are not listed in 0.453 or 0.455 are not routinely available for public inspection. Such records fall into two categories.

(1) The first category consists of those records or kinds of records listed in 0.457 and of particular records withheld from public inspection under 0.459. The Commission has determined that there is a statutory basis for withholding these records from public inspection. In some cases, the Commission is prohibited from permitting the inspection of records. In other cases, the records are the property of another agency, and the Commission has no authority to permit their inspection. In still other cases, the Commission is authorized, for reasons of policy to withhold records from inspection, but is not required to do so.

(2) The second category consists of records which are not listed in 0.453, 0.455 or 0.457 and have not been withheld from inspection under 0.459. In some cases, these records have not been identified for listing. In other cases (e.g., the general correspondence files), the Commission is unable to determine either that all records in a class should be routinely available for inspection or that all records in that class should not be routinely available for inspection, and individual determination is required.

(3) Procedures governing requests for inspection of these records are set out in 0.461.

(4) Procedures governing demands by competent authority for inspection of these records are set out in 0.463.

(5) Except as provided in 0.461 and 0.463, no officer or employer of the Commission shall permit the inspection of records which are not routinely available for public inspection under 0.453 or 0.455, or disclose information contained therein.

(c) Copies. Section 0.465 applies to requests for copies of Commission records which are routinely available for public inspection under 0.453 and 0.455 and those which are made available for inspection under 0.461. Section 0.467 applies to requests for certified copies of Commission records.

(d) Search fees. Section 0.456 prescribes fees to cover the expense of searching for records made available for inspection under 0.460 or 0.461.

0.453 Public reference rooms. The Commission maintains the following public information rooms at its offices in Washington, D.C.

(a) The Broadcast and Docket Reference Room. The following documents files and records are available for inspection at this location:

(1) Files containing the records of all docketed cases. A file is maintained for each docketed hearing case and for each docketed rule making proceeding. Cards summarizing the history of such cases are available for inspection in the Dockets Branch.

(2) Broadcast applications and related files.

(3) Files containing petitions for rule making and related papers.

(4) Rulings under the fairness doctrine and Section 315 of the Communications Act, and related materials.

(b) Removed.

(c) The Library. Various legal and technical publications, and legislative history compilations, related to communications are available.

(d) The Cable Television Reference Room. The following are available:

(1) Applications for certifications of compliance and related files; (2) Petitions for special relief, requests for show and related files; and (3) Applications for authorizations in the Cable Television Relay Service.

0.455 Other Locations at which records may be inspected. Except as provided in 0.453, .457, and .459, records are routinely available for inspection in the offices of the Bureau or Office which exercises responsibility over the matters to which those records pertain (see 0.5), or will be made available for inspection at those offices upon request. Upon inquiry to the appropriate Bureau or Office, persons directed to the specific location at which the particular records may be inspected. A list of Bureaus and Offices and examples of the records available at each is set out below.

(a) Office of the Chief Engineer. (1) Experimental application and license files.

(2) The Master Frequency Records.

(3) Applications for equipment authorization (type acceptance, type approval, certification, or advance approval of subscription television systems), following the effective date of the authorization. See 0.457(d)(1)(ii). (Application files are maintained at the Commission's Laboratory in Laurel Maryland).

(b) Broadcast Bureau. (1) Applications for broadcast authorizations and related files are available for public inspection in the Broadcast and Docket Reference Room. See 0.453(a)(2). Certain broadcast applications, reports and records are also available for inspection in the community in which the main studio of the station in question is located or proposed to be located. See §§73.3526 and 73.3527.

(2) Ownership reports filed by licensees of broadcast stations pursuant to §73.3615.

(3) Contracts relating to network service filed on or after the 1st day of May, 1969, under §73.3613.

(4) Annual employment report filed by licensees and permittees of broadcast stations pursuant to §73.3612.

(5) Cable TV system reports filed by operators pursuant to §76.403.

(c) Common Carrier Bureau. (1) Annual reports filed by carriers and certain affiliates under 43.21 of this chapter.

(2) Monthly reports filed by carriers under 43.31 of this chapter.

(3) Reports on pensions and benefits filed by carriers under 43.42 of this chapter.

(4) Reports of proposed changes in depreciation rates filed by carriers under 43.43 of this chapter.

(5) Reports regarding division of international telegraph communication charges filed under 43.53 of this chapter.

(6) Reports regarding services performed by telegraph carriers filed under 43.54 of this chapter.

(7) Reports of public coast station operators filed under 43.71

(8) Valuation reports filed under section 213 of the Communications Act, including exhibits in connection therewith, unless otherwise ordered by the Commission, with reasons therefor, pursuant to section 213(g) of the Communications Act. See 0.457(c)(2).

(9) A list of other reports filed by common carriers.

(10) Contracts and other arrangements filed under 43.51 and reports of negotiations regarding foreign communication matters filed under 43.52 of this chapter, except for those kept confidential by the Commission pursuant to section 412 of the Communications Act. See 0.457(c)(3).

(11) Tariff schedules for all charges for interstate and foreign wire or radiocommunications filed pursuant to section 203 of the Communications Act, all documents filed in connection therewith, and all communications related thereto.

(12) All applications for common carrier authorizations, both radio and non-radio, and files relating thereto.

(13) All formal and informal complaints against common carriers filed under §§1.711-1.735 of this chapter, all documents filed in connection therewith, and all communications related thereto.

(14) Files relating to submarine cable landing licenses, except for maps showing the exact location of submarine cables, which are withheld from inspection under section 4(j) of the Communications Act. See §0.457(c) (1) (i).

(d) Private Radio Services. All authorizations in the Private Radio Services and files relating thereto. These materials are all available at the Commission's office in Gettysburg, Pennsylvania.

(e) Field Operations Bureau. (1) Commercial radio operator application files. See, however, §0.457(f) (3).

(2) Files pertaining to the certification of plants or equipment under Part 18 of this chapter.

(f) Office of the Secretary. (1) All minutes of Commission actions, containing a record of all final votes, except for minutes of actions on classified matters and internal management matters as provided in §0.457 (b) (1) and (c) (1) (ii). These minutes are available for inspection in the Minutes and Rules Branch.

(2) Files containing information concerning the history of the Commission's rules. These files are available for inspection in the Minute and Rules Branch.

(3) See §0.443.

§0.457 Records not routinely available for public inspection. The records listed in this section are not routinely available for public inspection. The records are listed in this section by category, according to the statutory basis for withholding those records from inspection; and under each category, if appropriate, the underlying policy considerations affecting the withholding and disclosure of records in that category are briefly outlined. Except where the records are not the property of the Commission or where the disclosure of records is prohibited by law, the Commission will entertain

requests from members of the public under 0.461 for permission to inspect particular records withheld from inspection under the provisions of this section, and will weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection in the light of the facts of the particular case. In making such requests, it is important to appreciate that there may be more than one basis for withholding particular records from inspection. The list of records by category is not intended to imply the contrary but is solely for the information and assistance of persons making such requests.

Requests to inspect or copy the transcript, recordings or minutes of agency or advisory committee meetings will be considered under 0.603 rather than under the provisions of this section.

(a) Materials that are specifically authorized under criteria established by executive to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order, 5 U.S.C. 552(b) (1).

(1) E.O. 10450, "Security Requirements for Government Employees," 18 F.R. 2489, April 27, 1953, 3 CFR, 1949-1953 Comp., p. 936. Pursuant to the provisions of E.O. 10450, reports and other material and information developed in security investigations are the property of the investigative agency. If they are retained by the Commission, it is required that they be maintained in confidence and that no access be given to them without the consent of the investigative agency. Such materials and information will not be made available for public inspection. See also paragraphs (f) and (g) of this section.

(2) E.O. 10501, "Safeguarding Official Information in the Interests of the Defense of the United States," 18 F.R. 7049, November 10, 1953, as amended, 3 CFR, 1965 ed., p. 450. E.O. 10501, as amended, provides for the classification of official information which requires protection in the interests of national defense, and prohibits the disclosure of classified information except as provided therein. Classified materials and information will not be made available for public inspection. See also, E.O. 10033, February 8, 1949, 14 F.R. 561, 3 CFR, 1949-1953 Comp., p. 226, and 47 U.S.C. 154(j).

(b) Materials that are related solely to the internal personnel rules and practices of the Commission, 5 U.S.C. 552(b) (2).

(1) Materials related solely to internal management matters, including minutes of Commission actions on such matters. Such materials may be made available for inspection under §0.461, however, unless their disclosure would interfere with or prejudice the performance of the internal management functions to which they relate, or unless their disclosure would constitute a clearly unwarranted invasion of personal privacy (see paragraph (f) of this section).

(2) Materials relating to the negotiation of contracts.

(3) All materials used in conducting radio operator examinations, including test booklets, Morse Code tapes and scoring masks.

(c) Materials that are specifically exempted from disclosure by statute, (other than the Government in the Sunshine Act, 5 U.S.C. 552b): Provided, That such statute (1) requires that the materials be withheld from the public in such a manner as to leave no discretion on the issue or (2) establishes particular criteria for withholding or refers to particular types of materials to be withheld. The Commission is authorized under the following statutory provisions to withhold materials from public inspection.

(1) Section 4(j) of the Communications Act, 47 U.S.C. 154(j), provides, in part, that, "The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense." Pursuant to that provision, it has been determined that the following materials should be withheld from public inspection (see also paragraph (a) of this section):

(i) Maps showing the exact location of submarine cables.

(ii) Minutes of Commission actions on classified matters.

(iii) Maps of nation-wide point-to-point microwave networks.

(2) Under section 213(f) of the Communications Act, 47 U.S.C. 213(f), the Commission is authorized to order, with the reasons therefor, that records and data pertaining to the valuation of the property of common carriers and furnished to the

Commission by the carriers pursuant to the provisions of that section, shall not be available for public inspection. If such an order has been issued, the date and records will be withheld from public inspection, except under the provisions of 0.461. Normally, however, such data and information is available for inspection. See 0.455 (c) (8).

(3) Under section 412 of the Communications Act, 47 U.S.C. 412, the Commission may withhold from public inspection certain contracts, agreements and arrangements between common carriers relating to foreign wire or radio communication. Reports of negotiations regarding such foreign communication matters, filed by carriers under 43.52 of this chapter, may also be withheld from public inspection under section 412. Any person may file a petition requesting that such materials be withheld from public inspection. To support such action, the petition must show that the contract, agreement or arrangement relates to foreign wire or radio communications; that its publication would place American communication companies at a disadvantage in meeting the competition of foreign communication companies; and that the public interest would be served by keeping its terms confidential. If the Commission orders that such materials be kept confidential, they will be made available for inspection only under the provisions of 0.461.

(4) Section 605 of the Communications Act, 47 U.S.C. 605, provides, in part, that, "no person not being authorized by the sender shall intercept any communication (by wire or radio) and divulge or publish the existence, contents, substances, purport, effect, or meaning of such intercepted communications to any person." In executing its responsibilities, the Commission regularly monitors radio transmissions (see 0.116). Except as required for the enforcement of the communications law, treaties, and the provisions of this chapter, or as authorized in section 605, the Commission is prohibited from divulging information obtained in the course of these monitoring activities; and such information, and materials relating thereto, will not be made available for public inspection.

(5) Section 1905 of the Criminal Code, 18 U.S.C. 1905, prohibits the unauthorized disclosure of certain confidential information. See paragraph (d) of this section.

(d) Trade secrets and commercial or financial information obtained from any person and privileged or confidential, 5 U.S.C. 552(b) (4) and 18 U.S.C. 1905. Section 552(b) (4) is specifically applicable to trade secrets and commercial or financial information but is not limited to such matters. Under this provision, the Commission is authorized to withhold from public inspection materials which would be privileged as a matter of law if retained by the person who submitted them, and materials which would not customarily be released to the public by that person, whether or not such materials are protected from disclosure by a privilege. See, Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, June 1967, at pages 32-34.

(1) The materials listed in this subparagraph have been accepted or are being accepted, by the Commission on a confidential basis pursuant to 5 U.S.C. 552(b) (4). To the extent indicated in each case, the materials are not routinely available for public inspection. If the protection afforded is sufficient, it is unnecessary for persons submitting such materials to submit therewith a request for non-disclosure pursuant to 0.459. A persuasive showing as to the reasons for inspection will be required in requests for inspection of such materials submitted under 0.461.

(i) Financial reports submitted by licensees of broadcast stations pursuant to 1.611 of this chapter or by radio and television networks are not routinely available for public inspection. (Fees paid upon consummation of the assignment or transfer of a broadcast station license, pursuant to 1.1111 of this chapter, are computed from information contained in financial reports submitted pursuant to 1.611. Information and correspondence concerning such computations are not routinely available for public inspection.

(ii) Applications for equipment authorizations (type acceptance, type approval, certification, or advance approval of subscription television systems), and materials relating to such applications, are not routinely available for public inspection prior to the effective date of the authorization. The effective date of the authorization will, upon request, be deferred to a date no earlier than that specified by the applicant. Following the effective date of the authorization, the application and related materials (including technical specifications and test measurements) will be made available for inspection upon request (see 0.460).

(iii) Schedules 2, 3 and 4 of financial reports submitted for cable television systems pursuant to 76.403 of this chapter.

(iv) Annual fee computation forms submitted for cable television systems pursuant to 76.406 of this chapter.

(2) Prior to July 4, 1967, the rules and regulations provided that certain materials submitted to the Commission would not be made available for public inspection or provided assurance, in varying degrees, that requests for non-disclosure of certain materials would be honored. See, e.g., 47 CFR (1966 ed.) 0.417, 2.557, 5.204, 5.255, 15.70, 21.406, 81.506, 83.436, 87.153, 89.215, 91.208, 91.605 and 93.208. Materials submitted under these provisions are not routinely available for public inspection. To the extent that such materials were accepted on a confidential basis under the then existing rules, they are not routinely available for public inspection. The rules cited in this subdivision were superseded by the provisions of this paragraph, effective July 4, 1967. Equipment authorization information accepted on a confidential basis between July 4, 1967 and March 25, 1974 will not be routinely available for inspection and a persuasive showing as to the reasons for inspection of such information will be required in requests for inspection of such materials submitted under 0.461.

(i) Unless the materials to be submitted are listed in paragraph (d) (1) of this section and the protection thereby afforded is adequate, it is important for any person who submits materials which he wishes withheld from public inspection under 5 U.S.C. 552(b)(4) to submit therewith a request for non-disclosure pursuant to 0.459. If it is shown in the request that the materials contain trade secrets or commercial, financial or technical data which would customarily be guarded from competitors, the materials will not be made routinely available for public inspection; and a persuasive showing as to the reasons for inspection will be required in requests for inspection submitted under 0.461. In the absence of a request for non-disclosure, the Commission may, in the unusual instance, determine on its own motion that the materials should not be routinely available for public inspection. Ordinarily, however, in the absence of such a request, materials which are submitted will be made available for inspection upon request pursuant to 0.461 even though some question may be present as to whether they contain trade secrets or like matter.

(e) Interagency and intra-agency memorandums of letters, 5 U.S.C. 552 (b) (5). Interagency and intra-agency memorandums or letters and the work papers of members of the Commission or its staff will not be made available for public inspection, except in accordance with the procedures set forth in 0.461. Only if it is shown in a request under 0.461 that such a communication would be routinely available to a private party through the discovery process in litigation with the Commission will the communication be made available for public inspection. Normally such papers are privileged and not available to private parties through the discovery process, since their disclosure would tend to restrain the commitment of ideas to writing, would tend to inhibit communication among Government personnel, and would, in some cases, involve premature disclosure of their contents.

NOTE: Section 1905 of the Criminal Code, 18 U.S.C. 1905, prohibits the unauthorized disclosure of certain confidential information by employees of the United States. That section reads as follows:

Section 1905. Disclosure of confidential information generally. Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and shall be removed from office or employment (June 25, 1948, ch 645, 62 Stat. 791).

(f) Personnel, medical and other files whose disclosure would constitute a clearly unwarranted invasion of personal privacy, 5 U.S.C. 552(e) (6).

(1) Under Executive order 10561, 10 F.R. 5963, September 13, 1954, 3 CFR 1954-59, Comp., page 205, the Commission maintains an Official Personnel Folder for each of its employees. Such folders are under the jurisdiction and control, and are a part of the records, of the U.S. Civil Service Commission. Except as provided in the rules of the Civil Service Commission (5 CFR 294. 701-294.703), such folders will not be made available for public inspection. In addition,

other records of the Commission containing private, personal or financial information concerning particular employees will be withheld from public inspection.

(2) (Reserved)

(3) Information submitted to the Commission by applicants for commercial radio operator licenses concerning the character and mental or physical health of the applicant is available for inspection only under procedures set forth in 0.461. Except in this respect, or where other aspects of a similar private nature warrant nondisclosure, commercial radio operator application files are available for inspection.

(g) Investigatory records compiled for law enforcement purposes, to the extent that production of such records would

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source

(5) Disclose investigation techniques or procedures; or

(6) Endanger the life or physical safety of law enforcement personnel, 5 U.S.C. 552(b) (7).

0.459 Requests that materials or information submitted to the Commission be withheld from public inspection. (a) Any person submitting information or materials to the Commission may submit therewith a request that such information not be made routinely available for public inspection.

(If the materials are specifically listed in 0.457, such a request is unnecessary.) A copy of the request shall be attached to and shall cover all of the materials to which it applies and all copies of those materials. If feasible, the materials to which the request applies shall be physically separated from any materials to which the request does not apply; if this is not feasible, the portion of the materials to which the request applies shall be identified.

(b) Each such request shall contain a statement of the reasons for withholding the materials from inspection (see 0.457) and of the facts upon which those reasons are based. If the request is that the materials be withheld from inspection for a limited period of time, that period shall be specified.

(c) Casual requests which do not comply with the requirements of paragraphs (a) and (b) of this section will not be considered.

(d) Requests which comply with the requirements of paragraphs (a) and (b) of this section will be acted on by the appropriate Bureau or Office Chief, who is directed to grant the request only if it presents a clear and convincing case for non-disclosure consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552. If the request is granted, the ruling will be placed in a public file in lieu of the materials withheld from public inspection. A copy of the ruling shall be forwarded to the General Counsel.

(e) If the materials are submitted voluntarily (i.e., absent any direction by the Commission), the person submitting them may request the Commission to return the materials without consideration if the request for confidentiality should be denied. In that event, the materials will ordinarily be returned (e.g., an application will be returned if it cannot be considered on a confidential basis); only in the unusual instance where the public interest so requires will the materials be made available for public inspection. If submission of the materials is required by the Commission and the request for confidentiality is denied, the materials will be made available for public inspection.

(f) If no request for confidentiality is submitted, the Commission assumes no obligation to consider the need for nondisclosure but, in the unusual instance, may determine on its own motion that the materials should be withheld from public inspection. See 0.457(g).

(g) If a request for confidentiality is denied, the person who submitted the request may, within 5 working days, file an application for review of such by the Commission. If the application for review is denied, the person who submitted the request will be afforded 5 working days in which to seek a judicial stay of the ruling. If these periods expire without action by the person who submitted the request, the materials will be returned to the person who submitted them or will be placed in a public file. Notice of denial and of the time for seeking review or a judicial stay will be given by telephone, with follow-up notice in writing.

(h) If the request is granted, the status of the materials is the same as that of materials listed in 0.457. Any person wishing to inspect them may submit a request for inspection under 0.461.

0.460 Requests for inspection of records which are routinely available for public inspection. (a) Sections 0.453 and 0.455 list those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Subject to the limitations set out in this section and to the provisions of 0.466, a person who wants to inspect such records need only appear at the specified location and ask to see the records.

(b) A person who does not want a copy of the records must appear at the specified location during the office hours of the Commission and must inspect the records at the location. (Procedures governing requests for copies are set out in 0.465). However, arrangements may be made in advance, by telephone or by correspondence, to make the records available for inspection on a particular date and there are many circumstances in which such advance arrangements will save inconvenience. If the request is for a large number of documents, for example, a delay in collecting them is predictable. Current records may be in use by the staff when the request is made. Older records may have been forwarded to another location for storage.

(c) The records in question must be reasonably described by the person requesting them so as to permit their location by staff personnel. The information needed to locate the records will vary, depending on the records requested. Advice concerning the kind of information needed to locate particular records will be furnished in advance upon request. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

(d) If it appears that there will be an appreciable delay in locating or producing the records (as where a large number of documents is the subject of a single request or where an extended search for a document appears to be necessary), the request shall be submitted in writing either in person or by mail.

(e) Written requests shall be captioned "REQUEST FOR INSPECTION OF RECORDS," shall be dated, shall list the telephone number (if any) of the person making the request and, for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document. Written requests shall, in addition, specify the maximum search fee the person making the request is prepared to pay (see 0.466). If the specified maximum is reached before all of the records have been located, the search will be terminated, and the person making the request will be so notified.

(f) Written requests shall be delivered or mailed directly to the Chief of the organizational unit having custody of the records as listed in 0.453 and 0.455. If the request is enclosed in an envelope, the front shall be marked, "REQUEST FOR INSPECTION OF RECORDS."

(g) When a written request is received by the custodian of the records, it will be date-stamped.

(h) All requests limited to records listed in 0.453 and 0.455 will be granted. Requests for records listed in those sections shall not be combined with requests for other records.

(i) The records will be produced for inspection at the earliest possible time.

0.461 Requests for inspection of materials not routinely available for public inspection. Any person desiring to inspect Commission records which are not listed in 0.453 or 0.455 shall file a request for inspection meeting the requirements of this section.

(a) The records in question must be reasonably described by the person requesting them so as to permit their location by staff personnel. See 0.460(c).

(b)(1) Requests shall be captioned "Freedom of Information Act Request" shall be dated, shall list the telephone number (if any) of the person making the request and, for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document.

(2) The request shall, in addition, specify the maximum search fee for the person making the request is prepared to pay (see 0.466). If the specified maximum is reached before all of the records have been located, the search will be terminated and the person making the request will be so notified.

(c) If the records are of the kinds listed in 0.457 or if they have withheld from inspection under 0.459, the request shall, in addition, contain a statement of the reasons for inspection and the facts in support thereof. In the case of other materials, no such statement need accompany the request; but the custodian of the records may require the submission of such a statement if he determines that the materials in question may lawfully be withheld from inspection.

(d)(1) Requests shall be delivered or mailed to the Managing Director. (For purposes of this section, the custodian of the records is the Chief of the appropriate Bureau or Office.)

(2) If the request is enclosed in an envelope, the envelope shall be marked, "Freedom of Information Act Request."

(3) An original and two copies of the request shall be submitted. If the request is for materials not open to routine public inspection under 0.457(d) or 0.459, one copy of the request will be mailed by the custodian of the records to the person who originally submitted the materials to the Commission.

(e) When the request is received by the Managing Director, it will be assigned to the Freedom of Information Act (FOIA) Control Office, where it will be date-stamped and assigned to the custodian of the records.

(f) Requests for inspection of records will be acted on as follows by the custodian of the records.

(1) If the Commission is prohibited from disclosing the records in question, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2) If the records are the property of another agency, the request will be referred to that agency and the person who submitted the request will be so advised, with the reasons therefor.

(3) If it is determined that the Commission does not have authority to withhold the records from public inspection, the request will be granted.

(4) If it is determined that the Commission does have authority to withhold the records from public inspection, the considerations favoring disclosure and non-disclosure will be weighed in the light of the facts presented, and the request will be granted, either conditionally or unconditionally, or denied.

(5) If there is a statutory basis for withholding part of a document only from inspection, that part will be deleted and the remainder will be made available for inspection.

(g) The custodian of the records will make every effort to act on the request within 10 working days after it is received by the FOIA Control Office.

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) It is necessary to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Commission.

If these circumstances are not present or if it is not possible to locate the records and make the determination within the extended period, the person who made the request will be advised of his rights and asked to consent to an extension or further extension. If he agrees to an extension, the custodian of the records will confirm the agreement in a letter specifying the length of the agreed-upon extension. If he does not agree to an extension, the request will be denied, on the grounds that the custodian has not been able to locate the records and/or to make the determination within the period for a ruling mandated by the Freedom of Information Act, 4U.S.C. 552. In that event, the custodian will continue to search for and/or assess the records and will advise the person who made the request of further developments; but that person may file an application for review by the Commission. When action is taken by the custodian of the records, written notice of the action will be given.

(h)(1) If a request for inspection of records submitted to the Commission in confidence under 0.457(d) or 0.459 is granted, an application for review of the action may be filed only by the person who submitted

the records to the Commission. The application for review and the envelope containing it (if any) shall be captioned "REVIEW OF FREEDOM OF INFORMATION ACTION." The application for review shall be filed within 10 working days after the date of the written ruling and shall be delivered or mailed to the General Counsel, and shall be served on the person who filed the request for inspection of records. The person who filed the request for information of records may respond to the application for review within 10 working days after it is filed. If an application for review is not filed within this period, the records will be produced for inspection.

(2) If the request for inspection of records submitted to the Commission in confidence under 0.457(d) or 0.459 is partially granted and partially denied, the person who submitted the records to the Commission and the person who filed the request for inspection of those records may file an application for review within 10 working days after the date of the written ruling. The application for review and the envelope containing it (if any) shall be captioned "REVIEW OF FREEDOM OF INFORMATION ACTION." The application for review shall be delivered or mailed to the General Counsel. If either person files an application for review, he shall serve it on the other. Responses may be filed within 10 working days after the application(s) for review is filed. If both persons file, or if an application for review is filed only by the person who filed the request for inspection of records, the application(s) will be acted on within 20 working days after the application filed by the person who requested the records is filed. If an application for review is filed only by the person who submitted the records to the Commission, it will be acted on within 20 days after it is filed. The time for filing applications for review and responses may be reduced on notice, if necessary to act on the request within the 20 day period. If an application for review is not filed within this period by the person who submitted the records to the Commission, the partial grant will be implemented.

(3) If the application for review filed by either person is denied, that person will be notified and advised of his rights in writing.

(4) If an application for review is filed by the person who submitted the records to the Commission is denied, or if records are made available on review which were not initially made available, the person who submitted the records to the Commission will be afforded 10 working days from the date of the written ruling in which to move for a judicial stay of the Commission's action. If he does not move for stay within this period, the records will be produced for inspection.

(5) Because of the statutory constraints imposed upon the Commission, no extensions of time will be granted to seek either Commission review or a judicial stay.

(i) Except as provided in paragraph (h) of this section, an application for review of an initial action on a request for inspection may be filed only by the person who made the request. The application shall be filed within 30 days after the date of the written ruling by the custodian of the records, and shall be captioned, "REVIEW OF FREEDOM OF INFORMATION ACTION." The envelope (if any) shall also be captioned. The application shall be delivered or mailed to the General Counsel and shall be served on the person (if any) who originally submitted the materials to the Commission. That person may file a response within 10 working days after the application for review is filed. If the records are made available on review, the person who submitted them to the Commission (if any) shall be afforded 10 working days after the date of the written ruling to seek a judicial stay. See paragraph (h) of this section. (For general procedures relating to applications for review, see 1.115 of this chapter.)

(j) RESERVED.

(k) The Commission will make every effort to act on an application for review of an action on a request for inspection of records within 20 working days after it is filed. See, however, paragraph (h)(2) of this section. If it is not possible to locate the records and to determine whether they should be made available for inspection within 20 working days, the General Counsel may, in the following circumstances and to the extent time has not been extended under paragraph (g) of this section, extend the time for action by up to 10 working days. (The total period of extensions taken under this paragraph and under paragraph (g) of this section without the consent of the person who submitted the request shall not exceed 10 working days):

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request:

(2) It is necessary to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Commission.

If these circumstances are not present or if it is not possible to locate the records and make the determination within the extended period, the person who made the request will be advised of his rights and asked to consent to an extension or further extension. If he agrees to an extension, the General Counsel will confirm the agreement in a letter specifying the length of the agreement. If he does not agree to an extension, the Commission will continue to search for and/or assess the records and will advise the person who made the request of further developments; but that person may file a complaint in an appropriate United States district court.

(l) Subject to the application for review and judicial stay provisions of paragraphs (h) and (i) of this section, if the request is granted, the records will be produced for inspection at the earliest possible time.

(m) Staff orders and letters denying requests for inspection are signed by the official (or officials) who give final approval of their contents. If a request is denied by the Commission, notice of denial will set forth the names of the Commissioners participating in the decision.

0.463 Demand by competent authority for the production of documents or testimony concerning information contained therein.

(a) In the event that a demand (subpoena, order or other demand) is made by a court or other component authority outside the Commission, upon any officer or employee of the Commission for the production of records/files or for testimony concerning information contained therein, he shall promptly advise the Executive Director of such demand, the nature of the papers or information sought, and all other relevant facts and circumstances. The Commission will thereupon issue such instructions as may be advisable.

(b) Unless specifically authorized to produce records/files or to testify with respect thereto, any officer or employee who is served with demand for production of records/files or testimony concerning same shall appear in response to demand and decline to produce such records/files or testify concerning them, basing his refusal upon this rule.

0.465 Request for copies of materials which are available or made available for public inspection. (a) The commission annually awards a contract to a commercial firm to make copies of Commission records and offer them for sale to the public. In addition to the cost of copying, the contractor may charge fee for extracting the requested documents from the Commission's files.

Note--The name, address, telephone number, and schedule of fees for the current duplication contractor are published annually at the time of contract award or renewal in a Public Notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632-7000.

(b) The Commission awards a contract to a commercial firm to transcribe Commission proceedings in which a verbatim record is kept and to offer copies of the transcript for sale to the public. Except as authorized by the Commission, the firm is required to retain the capacity to furnish copies of the transcript for a period of 5 years and may retain that capacity for a longer period, even though another firm is currently transcribing Commission proceedings. Requests for copies of the transcript of the current proceedings should be directed to the current contractor. Requests for transcript of older proceedings will be forwarded by the Commission to the firm which made the transcript in question; and the names of contracting firms for past years will be furnished upon request.

Note--The name, address, telephone number and schedule of fees for the current transcription contractor are published annually at the time of contract award or renewal in a Public Notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division. Telephone (202) 632-7000.

(c) (1) Contractual arrangements which have been entered into with commercial firms, as described in this section, do not in any way limit the right of the public to inspect Commission records or to extract therefrom whatever information may be desired. Coin-operated copy machines are available for use by the public in various reference rooms for the purpose of duplicating records available at those locations. In addition, any person may make photocopies of Commission records with his or her own equipment at locations where those records may be inspected. Prior approval for such arrangements, which must be obtained from the Operations Support Division, Office of Managing Director, is subject to the availability of adequate space and facilities to accommodate the user's equipment.

(c) (2) The Commission has reserved the right to make copies of its records for its own use or for the use of other agencies of the U.S. Government. When it serves the regulatory or financial interests of the U.S. Government, the Commission will make and furnish copies of its records free of charge. In other circumstances, however, if it should be necessary for the Commission to make and furnish copies of its records for the use of others, the fee for this service shall be the same as that charged by the general duplicating contractor for copies of those records under contractual arrangements described in paragraph (a) of this section. Copying charges may be waived or reduced by the General Counsel, upon a showing that waiver or reduction is in the public interest.

Note--The criterion considered in acting on a waiver request is whether "waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public". 5 U.S.C. 552(a)(4)(A). The following factors are relevant in applying that criterion: The number of persons to be benefited, the significance of the benefit, the private interest of the requester which the release may further, the usefulness of the materials to be released to the general public and the likelihood that a tangible public benefit will be realized. (see Attorney General's 1974 FOI Amdts. Memorandum, at 15.)

(3) Requests for copies by representatives of foreign governments or persons residing in foreign countries shall be submitted to the commission and will be revised by the General Counsel under criteria established by the Department of Commerce for controlling the export of technical data.

(d)(1) Copies of computer maintained data bases produced by the Commission may be obtained from the National Technical Information Service (NTIS), Department of Commerce, in the form of machine-readable, or diskettes. These materials are not available to the general public directly from the Commission. Data bases produced on magnetic tape and microfiche by the Commission are listed in two catalogs which may be obtained from NTIS. Extracts from these catalogs pertaining to the Commission are available without charge from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division. The catalogs describe the data base, state the estimated fee for providing it and specify ordering information. Periodic updates to computer maintained data bases, as they occur, will not be furnished in machine-readable form.

Note--The Commission awards a contract to provide the public with direct electronic access to a portion of the non-Government Master Frequency File data base released for access and residing on the contractor's computer system. The name, address, telephone number and schedule of fees for the current contractor are published annually at the time of contract award or renewal in a Public notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632-7000.

(2) Copies of computer generated data stored as paper printouts or on microfiche may also be obtained from the Commission's duplicating contractor (see paragraph (a) of this section).

(3) Copies of computer source programs and associated documentation produced by the Commission shall be obtained from the National Technical Information Service (NTIS), Department of Commerce. NTIS will forward each request received to the Commission. If it can be determined that the requested program is available, the Commission will forward the current edition to NTIS for distribution to the requester. Actual charges will be limited to cost of production plus overhead. NTIS will provide an estimate of the total cost for each request. NTIS will not stock Commission source programs and documentation, nor will they maintain a catalog of Commission computer programs that may be available due to the large volume of programs and the frequency with which they are revised. Requests shall be limited to computer source programs and associated documentation in existence when the request is submitted; requests which require the Commission to produce unique computer programs, data bases and documentation, which are not part of its inventory at the time of the request, will not be honored. Likewise, periodic updates of these materials, as they occur will not be furnished.

(4) The Commission reserves the right to distribute copies of its computer source programs and data bases to other intities as it sees fit and when it serves the regulatory interests of the U.S. Government or the Commission, as determined by the Managing Director.

(e) This section has no application to printed publications, which may be purchased from the Superintendent of Documents or private firms (see 0.411-0.420). Nor does it apply to application forms or information bulletins, which are prepared for the use and information of the public and are available upon request (see 0.421 and 0.423).

0.466 Search fees. (a) Subject to the provisions of this section, an hourly fee may be charged for recovery of the direct costs of searching for records requested under 0.460(d) or 0.461. The fee is based on the grade level of the employee(s) who makes the search, as specified in the following schedule:

Grade	Hourly fee
GS-2.....	5.89
GS-3.....	6.64
GS-4.....	7.45
GS-5.....	8.34
GS-6.....	9.30
GS-7.....	10.33
GS-8.....	11.44
GS-9.....	12.64
GS-10.....	13.92
GS-11.....	15.29
GS-12.....	18.32
GS-13.....	21.79
GS-14.....	25.75
GS-15.....	30.29

Note--These fees will be modified periodically to correspond with modifications in the rates of pay approved by Congress.

The above fees were computed at Step 5 of each grade (based on the General Schedule effective October, 1982 and include 10.6 per cent for personnel benefits.

(b) No search fee will be charged if:

- (1) The records are not located;
- (2) The records are located but are not made available for inspection;
- (3) The search does not exceed one hour in duration.

(c) The search fee will be waived or reduced by the General Counsel, upon a showing that waiver or reduction is in the public interest.

Note: The criterion considered in acting on a waiver request is whether "waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public". 5 U.S.C. 552(a)(4)(A): The following factors are relevant in applying that criterion: the number of persons to be benefited, the significance of the benefit, the private interest of the requester which the release may further, the usefulness of the materials to be released to the general public and the likelihood that a tangible public will be realized. (See Attorney General's 1974 FOI amts. Memorandum, at 15).

(d) The fee charged will not exceed an amount based on the time normally required to locate records of the kind requested. (For example, the person making the request will not be charged for the extra time required to locate records which have been misplaced or misfiled.)

(e)(1) In most cases, the request for inspection shall specify the maximum search fee that the person making the request is prepared to pay. See 0.460 (d) and (e) and 0.461(b). If the specified maximum is reached before all of the records have been located, the search will be terminated and the person making the request will so be notified.

(2) If the time of search will exceed 16 hours or the fee will exceed \$100 (as estimated by the custodian(s) of records), an advance payment is not tendered within three business days after receipt of notice that advance payment is required, the search will be halted and the request will be denied. As the search progresses, additional payments may be required if expenses exceed the original advance payment. If the payment(s) should exceed the expense of searching for materials, the difference will be refunded.

(f) When the search has been completed, the custodian of the records will give notice of the charges incurred to the person who made the request.

(g) The fee shall be paid to the Financial Management Division, Office of Managing Director, or as otherwise directed by the Commission.

(h) Evidence of payment shall be presented to the custodian of the records before the records are made available for inspection.

(i) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage, and additional charges may be imposed for again producing them.

(j) Record searches will not be undertaken on the request of any person who has incurred but has not paid charges for producing records.

§0.467 Certified copies. Copies of documents which are available, or made available, for inspection under §§0.451-0.465 will be prepared and certified by the Secretary, under seal, on written request specifying the exact documents, the number of copies desired, and the date on which they will be required. The request shall allow a reasonable time for the preparation and certification of copies. The fee for preparing copies shall be the same as that charged by the general duplicating contractor for the same work under contractual arrangements described in §0.465(a). The fee for certification shall be \$1 for each document.

PLACES FOR MAKING SUBMITTALS OR REQUESTS, FOR
FILING APPLICATIONS, AND FOR TAKING EXAMINATIONS

§0.471 Miscellaneous submittals or requests. Persons desiring to make submittals or requests of a general nature should communicate with the Office of the Secretary of the Commission.

§0.473 Reports of violations. Reports of violations of the Communications Act or of the Commission's rules and regulations may be submitted to the Commission in Washington or to any field office.

§0.475 Applications for employment. Persons who wish to apply for employment should communicate with the Chief, Personnel Division.

§0.481 Place of filing of applications for radio authorizations.

Class of station	Method of filing	No. of copies.
(a) Alaskan fixed public and Alaskan public coastal.	Via Engineer in Charge Radio District No. 14, Seattle, Wash., 98104.	2.
(b) Amateur	See §§0.483 and 0.485	As specified in form.
(c) Interim ship station license.	See §0.487	Do.
(d) Personal	To Federal Communications Commission, Gettysburg, Pa., 17325	Do.
(e) Ship (FCC Forms 502 & 405-B)	Do.	Do.
(f) Aircraft (FCC Forms 404 & 405-B)	Do.	Do.
(g) All others	Directly to the main Washington, D.C. office of Commission. See §0.401	Do.

0.483 Applications for amateur or commercial radio operator licenses. (a) Application filing procedures for amateur radio operator licenses are set forth in Par 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 places to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from any Commission field office or the FCC, Washington, D.C. 20554.

0.485 Amateur and commercial radio operator examinations. Written examinations and Morse telegraphy examinations are conducted at prescribed intervals or by appointment at locations specified in the Commission's current examination schedule, copies of which are available from any Commission field office or from the FCC, Washington, D.C. 20554.

§0.489 Applications for ship radio inspection and periodical survey. Applications for ship radio inspection or for periodical survey shall be forwarded to the radio district office nearest the desired port of inspection or place of survey.

§0.491 Applications for exemption from compulsory ship radio requirements Applications for exemption filed under the provisions of section 352 (b) or 383 of the Communications Act; Regulation 4, Chapter I of the Safety Convention; Regulations 5 or 6; Chapter IV of the Safety Convention; Regulation 12(b), Chapter V of the Safety Convention; or Article 6 of the Great Lakes Agreement, shall be filed at the Commission's offices in Washington, D.C.

§0.493 Non-radio common carrier applications. All such application shall be filed at the Commission's offices in Washington, D.C.

SUBPART D -- MANDATORY DECLASSIFICATION OF NATIONAL SECURITY INFORMATION

0.501 General. Executive Order 12356 requires that information relating to national security be protected against unauthorized disclosure as long as required by national security considerations. The Order also provides that all information classified under Executive Order 12356 or predecessor orders be subject to a review for declassification upon receipt of a request made by a United States citizen or permanent resident alien, a federal agency, or a state or local government.

0.502 Purpose. This subpart prescribes the procedures to be followed in submitting requests, processing such requests, appeals taken from denials of declassification requests and fees and charges.

0.503 Submission of Requests for Mandatory Declassification Review. (a) Requests for mandatory review of national security information shall be in writing, addressed to the Managing Director, and reasonably describe the information sought with sufficient particularity to enable Commission personnel to identify the documents containing that information and be reasonable in scope.

(b) When the request is for information originally classified by the Commission, the Managing Director shall assign the request to the appropriate bureau or office for action.

(c) Requests related to information, either derivatively classified by the Commission or originally classified by another agency, shall be forwarded, together with a copy of the record, to the originating agency. The transmittal may contain a recommendation for action.

0.504 Processing Requests for Declassification. (a) Responses to mandatory declassification review requests shall be governed by the amount of search and review time required to process the request. A final determination shall be made within one year from the date of receipt of the request, except in unusual circumstances.

(b) Upon a determination by the bureau or office that the requested material originally classified by the Commission no longer warrants protection, it shall be declassified and made available to the requester, unless withholding is otherwise authorized under law.

(c) If the information may not be declassified or released in whole or in part, the requester shall be notified as to the reasons for the denial, given notice of the right to appeal the denial to the Classification Review Committee, and given notice that such an appeal must be filed within 60 days of the date of denial in order to be considered.

(d) The Commission's Classification Review Committee, consisting of the Managing Director (Chairman), the General Counsel or his designee, and the Chief, Internal Review and Security Division, shall have authority to act, within 30 days, upon all appeals regarding denials of requests for mandatory declassification of Commission-originated classifications. The Committee shall be authorized to overrule previous determinations in whole or in part when, in its judgment, continued classification is no longer required. If the Committee determines that continued classification is required under the criteria of the Order, the requester shall be promptly notified and advised that an application for review may be filed with the Commission pursuant to 47 CFR 1.115.

0.505 Fee and Charges. (a) The Commission has designated a contractor to make copies of Commission records and offer them for sale (See 0.465).

(b) An hourly fee is charged for recovery of the direct costs of searching for requested documents (See 0.466).

0.506 FOIA and Privacy Act Requests. Requests for declassification that are submitted under the provisions of the Freedom of Information Act, as amended, (see 0.461), of the Privacy Act of 1974, (see 0.554) shall be processed in accordance with the provisions of those Acts.

DOWNGRADING AND DECLASSIFICATION

0.520 Introduction. (a) Executive Order 12065 is intended to improve protection against unauthorized disclosure of national security information or material while increasing openness in Government by limiting classification and accelerating declassification. Declassification shall be given emphasis comparable to that accorded classification, with declassification action taken as early as national security considerations permit. The loss of the information's sensitivity with the passage of time or on the occurrence of a declassification event shall form the basis for the decision to declassify. Commission documents given original classification prior to December 1, 1978 may be declassified by the authorizing official, a successor, or by a supervisory official of either.

(b) Those permanent records given original classification by the Commission prior to December 1, 1978, and not in the possession and control of the General Services Administration, must receive a systematic review for declassification prior to becoming twenty years old. Any record considered to require extension of classification must be submitted to an official authorized under E.O. 12065 as original classification authority. Absent such approval, or a prior automatic declassification date, the information is declassified automatically at the end of twenty years from the date of original classification. Exempt from such automatic declassification and the twenty year systematic review is foreign government information. Such information, unless declassified earlier, will be given a declassification review thirty years from its date of origin. As used herein, "foreign government information" is information provided to the United States by a foreign government or international organization of governments in the expectation, express or implied, that the information is to be kept in confidence; or information produced by the United States pursuant to a written joint agreement with a foreign government or international organization of governments requiring that either the information or the arrangements, or both, be kept in confidence.

0.521 Mandatory declassification review. (a) The Office of the Executive Director is hereby designated as the office to which members of the public or Departments may direct requests for mandatory review for declassification under this provision. In the case of documents originally classified by the Commission, this office shall, in turn assign the request to the appropriate office for action within 60 days. In each instance, receipt of the request will be acknowledged in writing immediately by the office which has been assigned action. A request for classification review must reasonably describe the document.

(b) Whenever a request is deficient in its description of the record sought, the requester should be asked to provide additional identifying information to the extent possible. Whenever a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken. Upon a determination that the requested material no longer warrants classification, it shall be declassified and made promptly available to the requester, if not otherwise exempt from disclosure under 5 U.S.C. 522(b) (Freedom of Information Act) or other provision of law. If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Classification Review Committee, and a notice that such an appeal must be filed with the Commission within 60 days in order to be considered.

(c) When the request relates to a document given derivative classification by the Commission, the request and the document will be forwarded to the originator of the source document, and the requester notified of such referral.

(d) Employees presently cleared for access to classified information are encouraged to challenge classification in cases where there is reasonable cause to believe that information is classified unnecessarily, improperly, or for an inappropriate period of time. Such challenges should be brought to the attention of the Executive Director who will act thereon within 30 days, informing the challenger of actions taken. Requests for confidentiality will be honored.

0.530 Access to classified materials. No person may be given access to to classified information (a) Unless that person has been determined to be trustworthy and (b) Unless access is necessary for the performance of official duties.

0.531 Access by historical researchers and former presidential appointees. The requirements of 0.530 may be waived for persons who are engaged in historical research projects, or who previously served as FCC Commissioners, provided they execute written agreements to safeguard the information and written consent to the Commission's review of their notes and manuscripts solely for the purpose of determining that no classified information is disclosed. A precondition to any such access is the favorable completion of an appropriate investigative inquiry.

0.540 Fees and charges. (a) The Commission has designated a contractor to make copies of Commission records and offer them for sale (See 0.465).

(b) An hourly fee is charged for recovery of the direct costs of searching for the documents (See 0.466). No search fee will be charged if:

- (1) The records are not located;
- (2) The records are located but not declassified;
- (3) The search does not exceed one hour in duration.

SUBPART E -- PRIVACY ACT REGULATIONS

0.551 Purpose and scope; definitions. (a) The purpose of this subpart is to implement the Privacy Act of 1974, 5 U.S.C. 552(a), and to protect the rights of the individual in the accuracy and privacy of information concerning him which is contained in Commission records. The regulations contained herein cover any group of records, under the Commission's control from which information about individuals is retrievable by the name of an individual or by some other personal identifier.

(b) In this subpart:

(1) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(2) "Record" means any item, collection or grouping of information about an individual that is maintained by the Commission, including but not limited to, his education, financial transactions, medical history, and criminal or employment history, and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(3) "System of Records" means a group of records under the control of the Commission from which information is retrievable by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(4) "Routine Use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(5) "System Manager" means the Commission official responsible for the storage, maintenance, safekeeping, and disposal of a system of records.

0.552 Notice identifying Commission systems of records. The Commission annually publishes in the FEDERAL REGISTER a notice listing systems of records currently maintained by the Commission, including for each system of records:

(a) The name and location of the system;

(b) The categories of individuals on whom records are maintained in the system;

(c) The categories of records maintained in the system;

(d) Each routine use of the records contained in the system, including the categories of users and the purposes of such use;

(e) The policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(f) The title and business address of the system manager;

(g) The address of the agency office to which inquiries should be addressed and the addresses of locations at which the individual may inquire whether a system contains records pertaining to himself;

(h) The agency procedures whereby an individual can be notified how access can be gained to any record pertaining to that individual contained in a system of records, and the procedure for correcting or contesting its contents; and

(i) The categories of sources of records in the system.

0.553 New uses of information. Before establishing a new routine use of a system of records, the Commission will publish a notice in the FEDERAL REGISTER of its intention to do so, and will provide at least 30 days for public comment on such use. The notice will contain:

(a) The name of the system of records for which the new routine use is to be established;

- (b) The authority for the system;
- (c) The categories of records maintained;
- (d) The proposed routine use(s); and
- (e) The categories of recipients for each proposed routine use.

0.554 Procedures for requests pertaining to individual records in a system of records. (a) Upon request, the Commission will notify an individual as to whether it maintains information about him or her in a system of records and, subject to the provisions of 0.555(b), will disclose the substance of such information to that individual. In order to properly request notification or access to record information, reference must be made to the Notice described in 0.552. A table of contents, which is alphabetized by bureau or office, precedes the system descriptions and allows members of the public to easily identify record systems of interest to them. An individual may inquire into information contained in any or all systems of records described in the Notice. However, each inquiry shall be limited to information from systems located within a single bureau or office and shall be addressed to that bureau or office.

(b) Reasonable identification is required of all individuals making requests pursuant to Paragraph (a) of this section in order to assure that disclosure of any information made to the proper person.

(1) An individual who chooses to register a request for information in person may verify his or her identity by showing any two of the following: social security card; drivers license; employee identification card; medicare card; birth certificate; bank credit card; or other positive means of identification. Documents incorporating a picture and/or signature of the individual shall be produced if possible. If an individual can provide no suitable document for identification, he will be required to sign a statement asserting his identity and stipulating that he understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

NOTE: An individual's refusal to disclose his social security number shall not constitute cause in and of itself, for denial of a request.

(2) All requests for record information sent by mail shall be signed by the requestor and shall include his printed name, current address and telephone number (if any). Commission officials receiving such requests will attempt to verify the identity of the requestor by comparing his or her signature to those in the record. If the record contains no signatures and if positive identification cannot be made on the basis of other information submitted, the requestor will be required to sign a statement asserting his identity and stipulating that he understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

(3) If positive identification cannot be made on the basis of the information submitted, and if data in the record is so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom the record pertains, the Commission reserves the right to deny access to the record pending the production of additional more satisfactory evidence of identity.

NOTE: The Commission will require verification of identity only where it has determined that knowledge of the existence of record information or its substance is not subject to the public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, as amended.

(c) All requests for notification of the existence of record information or for access to such information shall be delivered to the business address of the system manager responsible for the system of records in question, except that requests relating to official personnel records shall be addressed to the Chief, Personnel Division. Such addresses can be found in the Notice described in 0.552.

(d) A written acknowledgement of receipt of a request for notification and/or access will be provided within 10 days (excluding Saturdays, Sundays, and legal public holidays) to the individual making the request. Such an acknowledgement may, if necessary, request any additional information needed to locate a record. A search of all systems of records identified in the individual's request will be made to determine if any records pertaining to the individual are contained therein, and the individual will be notified of the search results as soon as the search has been completed. Normally, a request will be processed and the individual notified of the search results within 30 days (excluding Saturdays, Sundays, and legal holidays) from the date the inquiry is received. However, in some cases, as where records have to be recalled from Federal Record Centers, notification may be delayed. If it is determined that a record pertaining to the individual making the request does exist, the notification will state approximately when the record will be available for personal review. No separate acknowledgement is required if the request can be processed and the individual notified of the search results within the ten-day period.

0.555 Disclosure of record information to individuals. (a) An individual having been notified that the Commission maintains a record pertaining to him or her in a system of records may request access to such record in one of three ways: by in person inspection at the system location; by transfer of the record to a nearer location; or by mail.

(1) Individuals who wish to review their records at the system location must do so during regular Commission business hours (8:00 a.m. - 4:30 p.m., Monday through Friday). For personal and administrative convenience, individuals are urged to arrange to review a record by appointment. Preferences as to specific dates and times can be made by writing or calling the system manager responsible for the system of records in question at least two days in advance of the desired appointment date, and by providing a telephone number where the individual can be reached during the day in case the appointment must be changed. Verification of identity is required as in 0.554(b)(1) before access will be granted an individual appearing in person. Individuals may be accompanied by a person of his or her own choosing when reviewing a record. However, in such cases, a written statement authorizing discussion of his or her record in the presence of the accompanying person must be furnished. In addition, any disclosure of original Commission records must take place in the presence of a Commission representative having physical custody of the records.

(2) Individuals may request that a record be transferred to a Commission field office or installation in the vicinity of his or her home and that access be granted at that location. The addresses of Commission field offices are listed in 0.121. A request to transfer records must specify the exact location where the records should be sent and a telephone number to call when the information is available for review at the field location. Paragraph (a)(1) of this section regarding personal appointments, verification of identity accompanying persons, and disclosure of original records applies equally to this paragraph.

(3) Individuals may request that copies of records be sent directly to them. In such cases, the individual must verify his or her identity as in 0.554(b)(2) and provide an accurate return address. Records shall be sent only to that address.

(b) The disclosure of record information under this section is subject to the following limitations:

(1) Records containing medical information pertaining to an individual are subject to individual access under this section unless, in the judgment of the system manager having custody of the records after consultation with a medical doctor, access to such record information could have an adverse impact on the individual. In such cases, a copy of the record will be delivered to a medical doctor named by the individual.

(2) Classified material, investigative material compiled for law enforcement purposes, investigatory material compiled solely for determining suitability for federal employment or access to classified information, and certain testing or examination material shall be removed from the records to the extent permitted in the Privacy Act of 1974, 5 U.S.C. 552 (a). Section 0.561 of this subpart sets forth the systems of records maintained by the Commission which are either totally or partially exempt from disclosure under this subparagraph.

(c) No fee will be imposed if the number of pages of records requested is 25 or less. Requests involving more than 25 pages shall be submitted to the duplicating contractor (see 0.456(a)).

(d) The provisions of this section in no way give an individual the right to access any information compiled in reasonable anticipation of a civil action or proceeding.

(e) In the event that a determination is made denying an individual access to his or her records for any reason, such individual may either:

(1) Seek administrative review of the adverse determination. Such a request shall be in writing and should be addressed to the system manager who made the initial decision. In addition, the request for review shall state specifically why the initial decision should be reversed.

(2) Seek judicial relief in the district courts of the United States pursuant to paragraph (g)(1)(B) of the Act.

0.556 Request to correct or amend records. (a) An individual may request the amendment of information contained in his or her record. Except as otherwise provided in this paragraph, the request to amend should be submitted in writing to the system manager responsible for the records. Requests to amend the official personnel records of active FCC employees should be submitted to the Chief, Personnel Division, Office of Executive Director, 1919 M Street, NW, Washington, D.C. 10554. Requests to amend official personnel records of former FCC employees should be sent to the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission 1900 E Street NW, Washington, D.C. 20414. Any request to amend should contain, as a minimum:

- (1) The identity verification information required by 0.554(b)
- (2) and the information needed to locate the record as required by 0.554(a).
- (2) A brief description of the item or items of information to be amended; and
- (3) The reason for the requested change.

(b) A written acknowledgment of the receipt of a request to amend a record will be provided within 10 days (excluding Saturdays, Sundays, and legal public holidays) to the individual requesting the amendment. Such an acknowledgment may, if necessary, request any additional information needed to make a determination. There will be no acknowledgment if the request can be reviewed, processed, and the individual notified of compliance or denial within the 10 day period.

(c) The responsible system manager or, in the case of official personnel records of active FCC employees, the Chief, Personnel Division, shall (normally within 30 days) take one of the following actions regarding a request to amend:

(1) If the system manager agrees that an amendment to the record is warranted, he shall:

(i) So advise the individual in writing;

(ii) Correct the record in compliance with the individual's request; and

(iii) If an accounting of disclosures has been made, advise all previous recipients of the fact that the record has been corrected and of the substance of the correction.

(2) If the system manager, after an initial review, does not agree that all or any portion of the record merits amendment, he shall:

(i) Notify the individual in writing of his refusal to amend and the reasons therefore;

(ii) Advise the individual that he may seek further administrative review of the initial decision by the full Commission pursuant to the procedures set forth in 0.557. (In cases where the request to amend involves official personnel records, review is available exclusively from the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, Washington, D.C. 20415); and

(iii) Inform the individual of the procedures for requesting Commission review pursuant to 0.557.

(d) In reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, or completeness of the record in light of each data element placed into controversy and the use of the record in making decisions that could possibly affect the individual. Moreover, he shall adjudge the merits of any request to delete information based on whether or not the information in controversy is both relevant and necessary to accomplish a statutory purpose required of the Commission by law or executive order of the President.

0.557 Administrative review of an initial decision not to amend a record.

(a) An individual has 30 days from the date of the determination not to amend a record consistent with his or her request to seek further administrative review by the full Commission. Such a request shall be in writing and should be addressed to either the system manager who made the initial adverse decision, or, in the case of official personnel records of active FCC employees, to the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, Washington, D.C. 20415. Any request for administrative review must:

(1) Clearly identify the questions presented for review (e.g., whether the record information in question is, in fact, accurate, whether information subject to a request to delete is relevant and necessary to the purpose for which it is maintained);

(2) Specify with particularity why the decision reached by the system manager is erroneous or inequitable; and

(3) Clearly state how the record should be amended or corrected.

(b) The Commission shall conduct an independent review of the record in controversy using the standards of review set out in 0.556(d). It may seek such additional information as is necessary to make its determination. Final administrative review shall be completed not later than 30 days (excluding Saturdays, Sundays and legal public holidays) from the date on which the individual requests such review unless the Chairman determines that a fair and equitable review cannot be made within the 30 day period. In such event, the individual will be informed in writing of the reasons for the delay and the approximate date on which the review is expected to be completed.

(c) If upon review of the record in controversy the Commission agrees with the individual that the requested amendment is warranted, the Commission will proceed in accordance with 0.556(c)(i)-(iii).

(d) If after the review, the Commission also refuses to amend the record as requested, it shall:

(1) Notify the individual in writing of its refusal and the reasons therefore,

(2) Advise the individual of his or her right to file a concise statement of the reasons for disagreeing with the decision of the Commission;

(i) That such a statement should be signed and addressed to the system manager having custody of the record in question;

(ii) That the statement will be made available to any one to whom the record is subsequently disclosed together with, at the Commission's discretion, a summary of its reasons for refusing to amend the record; and

(iii) That prior recipients of the record will be provided a copy of the statement of dispute to the extent that an accounting of such disclosures is maintained; and

(4) Advise the individual of his or her right to seek judicial review of the Commission's decision not to amend the record in any district court of the United States.

0.558 Advice and assistance. Individuals who have questions regarding the procedures contained in this subpart for gaining access to a particular system of records or for contesting the contents of a record, either administratively or judicially, should write or call the Privacy Liaison Officer at the following address: Federal Communications Commission, Office of General Counsel, 1919 M Street, N.W., Washington, D.C. 20554.

Individuals who request clarification of the Notice described in 0.552 or who have questions concerning the characterization of specific systems of records as set forth therein, should write or call the Privacy Liaison Officer at the following address: Federal Communications Commission, Records Management Branch, Office of Managing Director, 1200 19th Street, N. W. Room BB-325 Washington, D. C. 20554

0.559 Disclosure of disputed information to persons other than the individual to whom it pertains. If the Commission determines not to amend a record consistent with an individual's request, and if the individual files a statement of disagreement pursuant to 0.557(d)(2), the Commission shall clearly annotate the record so that the disputed portion becomes apparent to anyone who may subsequently have access to, use or disclose the record. A copy of the individual's statement of disagreement shall accompany any subsequent disclosure of the record. In

addition, the Commission may include a brief summary of its reasons for not amending the record when disclosing the record. Such statements become part of the individual's record for granting access, but are not subject to the amendment procedures of 0.556.

0.560 Penalty for false representation of identity. Any individual who knowingly and willfully requests or obtains under false pretenses any record concerning an individual from any system of records maintained by the Commission shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000.

0.561 Exemptions. The following systems of records are totally or partially exempt from Subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f) of the Privacy Act of 1974, 5 U.S.C. 552(a), and from Sections 0.554-0.557 of this subpart:

(a) System name: Radio Operator Records-FCC/FOB-1. Parts of this system of records are EXEMPT pursuant to Section (k)(2) of the Act because they contain investigatory material compiled solely for law enforcement purposes.

(b) System name: Violators File (records kept on individuals who have been subjects of FCC field enforcement actions)-FCC/FOB 2. Parts of this system of records are EXEMPT because they are maintained as a protective service for individuals described in Section 3056 of title 18, and because they are necessary for Commission employees to perform their duties, pursuant to Sections (k)(1), (2), and (3) of the Act.

(c) System name: Attorney Misconduct Files--FCC/OGC-2. This system of records is exempt pursuant to Section 3(k)(2) of the Act because it is maintained for law enforcement purposes.

(1) Hearing Division case file (includes information furnished by witnesses, complainants, informants)--FCC.

(2) Attorney Misconduct Files--FCC. This system of records is EXEMPT pursuant to Section 3(k)(2) of the Act because it is maintained for law enforcement purposes.

(d) System name: Licenses of Unlicensed Persons Operating Radio Equipment Improperly--FCC. Parts of this system of records are exempt pursuant to Section 3(k)(2) of the Act because they embody investigatory material compiled solely for law enforcement purposes.

(1) Communications Interception--§605--FCC.

(2) Alleged Violators File (United States District Court Enforcement Actions)--FCC.

(3) Alleged Violators File (Ex Parte Rules)--FCC.

(4) Licensees or Unlicensed Persons Operating Radio Equipment Improperly--FCC.

Part of this system of records are EXEMPT pursuant to Section 3(k)(2) of the Act because they embody investigatory material compiled solely for law enforcement purposes.

(e) System name: Personnel Investigation Records--FCC/Central-6. Parts of these systems of records are exempt because they embody investigatory material pursuant to Sections 3(k)(2) and 3(k)(5) of the Act as applicable.

(1) Personnel Investigation of Members of Advisory Committee (Maritime Communications Sub-committee, National Industry Advisory Committee)

(2) Personnel Investigations of Employees--FCC. Parts of these systems of records are exempt because they embody investigatory material pursuant to sections 3(k)(2) and 3(k)(5) of the Act as applicable.

SUBPART F -- MEETING PROCEDURES0.601 Definitions:

For purposes of this section --

(a) The term "agency" means (1) the Commission, (2) a Board of Commissioners (see 0.212), (3) the Telecommunications Committee (see 0.215), (4) the Subscription Television Committee (see 0.216), and (5) any other group of Commissioners hereinafter established by the Commission on a continuing or ad hoc basis and authorized to act on behalf of the Commission.

(b) The term "meeting" means the deliberations among a quorum of the Commission, a Board of Commissioners, or a quorum of a committee of Commissioners, where such deliberations determine or result in the joint conduct or disposition of official agency business, except that the term does not include deliberations to decide whether a meeting should be open or closed. (The term includes conference telephone calls, but does not include the separate consideration of Commission business by Commissioners.) For purposes of this subpart, each item on the agenda of a meeting is considered a meeting or a portion of a meeting.

0.602 Open meetings.

(a) All meetings shall be conducted in accordance with the provision of this subpart.

(b) Except as provided in 0.603, every portion of every meeting shall be open to public observation. Observation does not include participation or disruptive conduct by observers, and persons engaging in such conduct will be removed from the meeting.

0.603 Bases for closing a meeting to the public. Except where the agency finds that the public interest requires otherwise, an agency or advisory committee meeting may be closed to the public, and information pertaining to such meetings which would otherwise be disclosed to the public under 0.605 may be withheld, if the agency determines that an open meeting or the disclosure of such information is likely to:

(a) Disclose matters that (1) are specifically authorized under criteria established by executive order to be kept secret in the interest of national defense or foreign policy, and (2) are in fact properly classified pursuant to such executive order (see 0.457(a));

(b) Relate solely to the internal personnel rules and practices of an agency (see 0.457(b));

(c) Disclose matters specifically exempted from disclosure, by statute (other than the Freedom of Information Act, 5 U.S.C. 552). PROVIDED, That such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld (see 0.457(c));

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential (see 0.457(d));

(e) Involve accusing any person of a crime or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (see 0.457(ff)):

(e) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel:

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except where the agency has already disclosed to the public the content or nature of the disclosed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures specified in 5 U.S.C. 554 on the record after opportunity for hearing.

0.605 Procedures for announcing meetings.

(a) Notice of all open and closed meetings will be given.

(b) The meeting notice will be submitted for publication in the FEDERAL REGISTER on or before the date on which the announcement is made. Copies will be available in the Public Information Office on the day the announcement is made. Copies will also be attached to "FCC Actions Alert", which is mailed to certain individuals and groups who have demonstrated an interest in representing the public in Commission proceedings.

(c)(1) If the agency staff determines that a meeting should be open to the public, it will, at least one week prior to the meeting, announce in writing the time, place and subject matter of the meeting, that it is to be open to the public, and the name and phone number of the Public Information Officer, who has been designated to respond to requests for information about the meeting.

(2) If the staff determines that a meeting should be closed to the public, it will refer the matter to the General Counsel, who will certify that there is (or is not) a legal basis for closing the meeting to the public. Following action by the General Counsel, the matter may be referred to the agency for a vote on the question of closing the meeting (See 0.606).

(d)(1) If the question of closing a meeting is considered by the agency but no vote is taken, the agency will, at least one week prior to the meeting, announce in writing the time, place and subject matter of the meeting, that it is to be open to the public, and the name and phone number of the Public Information Officer.

(2) If a vote is taken, the agency will, in the same announcement and within one day after the vote, make public the vote of each participating Commissioner.

(3) If the vote is to close the meeting, the agency will also, in that announcement, set out a full written explanation of its action, including the applicable provision(s) of 0.603, and a list of persons expected to attend the meeting, including Commission personnel, together with their affiliations. The Commissioners, their assistants, the General Counsel, the Executive Director, the Public Information Officer, and the Secretary are expected to attend all Commission meetings. The appropriate Bureau or Office Chief and Division Chief are expected to attend meetings which relate to their responsibilities (see Subpart A of this part).

(4) If a meeting is closed, the agency may omit from the announcement information usually included. If and to the extent that it finds that disclosure would be likely to have any of the consequences listed in 0.603.

(e) If the prompt and orderly conduct of agency business requires that a meeting be held less than one week after the announcement of the meeting, or before that announcement, the agency will issue the announcement at the earliest practicable time. In addition to other information, the announcement will contain the vote of each member of the agency who participated in the decision to give less than seven days notice and will specify the nature of the emergency situation if it is not clear from the subject matter.

(f) If, after announcement of a meeting, the time or place of the meeting is changed or the meeting is cancelled, the agency will announce the change at the earliest practicable time.

(g) If the subject matter or the determination to open or close a meeting is changed, the agency will publicly announce the change and the vote of each member at the earliest practicable time. The announcement will contain a finding that agency business requires the change and that no earlier announcement of the change was possible.

0.606 Procedures for closing a meeting to the public.

(a) For every meeting closed under 0.603, the General Counsel will certify that there is a legal basis for closing the meeting to the public and will state each relevant provision of 0.603. The staff of the agency will refer the matter to the General Counsel for certification before it is referred to the agency for a vote on closing the meeting. Certifications will be retained in a public file in the Minute and Rules Branch, Office of the Secretary.

(b) The agency will vote on the question of closing a meeting --

(1) If a member of the agency requests that a vote be taken:

(2) If the staff recommends that a meeting be closed and one member of the agency requests that a vote be taken; or

(3) If a person whose interests may be directly affected by a meeting requests the agency to close the meeting for any of the reasons listed in 0.603(e), (f) or (g), or if any person requests that a closed meeting be opened, and a member of the agency requests that a vote be taken.

(Such requests may be filed with the Secretary at any time prior to the meeting and should briefly state the reason(s) for opening or closing the meeting. To assure that they reach the Commission for consideration prior to the meeting, they should be submitted at the earliest practicable time and should be called to the attention of the Secretary -- in person or by telephone. It will be helpful if copies of the request are

furnished to the members of the agency and the General Counsel. The filing of a request shall not stay the holding of a meeting.)

(c) A meeting will be closed to the public pursuant to 0.603 only by vote of a majority of the entire membership of the agency. The vote of each participating Commissioner will be recorded. No Commissioner may vote by proxy.

(d) A separate vote will be taken before any meeting is closed to the public and before any information is withheld from the meeting notice. However, a single vote may be taken with respect to a series of meetings proposed to be closed to the public, and with respect to information concerning such series of meetings (a vote on each question, if both are presented), if each meeting involves the same particular matters and is scheduled to be held no later than 30 days after the first meeting in the series.

(e) Less than seven days notice may be given only by majority vote of the entire membership of the agency.

(f) The subject matter or the determination to open or close a meeting will be changed only if a majority of the entire membership of the agency determines by recorded vote that agency business so requires and that no earlier announcement of the change was possible.

0.607 Transcript, recording or minutes, availability to the public.

(a) The agency will maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting closed to the public, except that in a meeting closed pursuant to paragraph (h) or (i) of 0.603, the agency may maintain minutes in lieu of a transcript or recording. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any item will be identified in the minutes.

(b) A public file of transcripts (or minutes) of closed meetings will be maintained in the Minute and Rules Branch, Office of the Secretary. The transcript of a meeting will be placed in that file if, after the meeting, the responsible Bureau or Office Chief determines, in light of the discussion, that the meeting could have been open to the public or that the reason for withholding information concerning the matters discussed no longer pertains. Transcripts placed in the public file are available for inspection under 0.460. Other transcripts, and separable portions thereof which do not contain information properly withheld under 0.603, may be made available for inspection under 0.461. When a transcript, or portion thereof, is made available for inspection under 0.461, it will be placed in the public file. Copies of transcripts may be obtained from the duplicating contractor pursuant to 0.465(a). There will be no search or transcription fee. Requests for inspection or copies of transcripts shall specify the date of the meeting, the name of the agenda and the agenda item number; this information will appear in the notice of the meeting. Pursuant to 0.465(c)(3), the Commission will make copies of the transcript available directly, free of charge, if it serves the financial or regulatory interests of the United States.

(c) The Commission will maintain a copy of the transcript or minutes for a period of at least two years after the meeting, or until at least one year after conclusion of the proceeding to which the meeting relates, whichever occurs later.

(d) The Commissioner presiding at the meeting will prepare a statement setting out the time and place of the meeting, the names of persons other than Commission personnel who were present at the meeting, and the names of Commission personnel who participated in the discussion. These statements will be retained in a public file in the Minute and Rules Branch, Office of the Secretary.

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SUBPART A - GENERAL RULES OF PRACTICE AND PROCEDURE

GENERAL

§1.1 Proceedings before the Commission. The Commission may on its own motion or petition of any interested party holding 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 subpoena 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 opinions of the Commission will best serve the purposes of such proceeding.

§1.2 Declaratory rulings. 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.

§1.3 Suspension, amendment, or waiver of rules. The provisions of this chapter may be suspended, revoked, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provision 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 therefore is shown.

§1.4 Computation of time. (a) It is frequently necessary under Commission procedures to compute the terminal date of a period of time where the period begins with the occurrence of an act, event, or default and terminates a specified number of days thereafter. Unless otherwise provided by statute, the first day to be counted in computing the terminal date is the day after the day on which the act, event, or default occurs. The last day of such period of time is included in the computation and any action require must be taken on or before that day.

(b) Except as otherwise provided by law, 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. Usually, such actions take the form of a document. The date of public notice commences at 3:00 P.M. Eastern Time on the day after any of the following dates:

(1) For documents in notice and comment rule-making proceedings, the date of publication in the FEDERAL REGISTER.

(2) For other documents released by the Commission (whether or not published in the FEDERAL REGISTER), the release date. A document is "released" by making the full text available to the press and the public in the Commission's Information Office. The release date appears on the face of the document.

(3) 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.

(4) 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 on which the document is sent (i.e., mailed, telegraphed, etc.) to persons affected by the action.

(c) All petitions, pleadings, tariffs, or other documents filed with the Commission must be tendered for filing in complete form before 5:30 p.m., in the Office of the Secretary.

(d) For purposes of this section, the term "holiday" shall include Saturdays, Sundays, legal holidays or half holidays in the District of Columbia, and any other day on which the Commission's offices are closed prior to 5:30 p.m. The term "business day" shall include all other days.

(e) For purposes of this section, 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; the term does not include any additional days allowed for filing any document under (f), (g) or (i) of this section. The term "filing date" means the date on which the document must be filed after computations are authorized.

(f) If the filing period is less than 7 days, intermediate holidays shall be excluded in determining the filing date. This paragraph shall not apply in the case of replies to petitions for suspension filed pursuant to 1.773(c). If the date for filing such a reply falls on a holiday the reply shall be filed on the next business day.

(g) Where service of a document is required by statute or by the provisions of this chapter, where the document is in fact served by mail (see 1.47(f)), and where the filing period for a response thereto is 10 days or less, an additional 3 days, excluding holidays will be allowed for filing the response. This paragraph shall not apply to documents which are filed pursuant to the provisions of 1.89, 1.20(d), 1.315(b), 1.316, or 1.773(c). In the case of replies to petitions for suspension filed under 1.773(c) (2) and (3) 3 additional days shall be allowed for filing in the circumstances set forth above, however, that time shall include holidays. If the date for filing such a reply falls on a holiday, the reply shall be filed on the next business day.

(h) If both paragraphs (f) and (g) of this section are applicable, make the computations called for by paragraph (f) making those called for by paragraph (g).

(i) If the filing date falls on a holiday, the document shall be filed on the next business day.

§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 this purpose.

(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.

§1.6 Availability of station logs and records of 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 the 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 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.

§1.8 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.

§ 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.

1.14 Citation of Commission documents. The appropriate reference to the FCC Reports, Second Series, shall be included as part of the citation to any documents which has been printed in the Reports (e.g. 1 FCC 2d 1 (1965)). See 0.413 and 0.416 of this chapter.

1.16 Unsworn declarations under penalty of perjury in lieu of affidavits
Any document to be filed with the FCC 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 proven 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)".

PARTIES AND PRACTITIONERS

§1.21 Parties. (a) Any party may appear before the Commission and be heard in person by an 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 an evidentiary hearing and, in the discretion of the presiding officer, may appear and be heard on behalf of the corporation in an evidentiary hearing proceeding.

§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 of the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him 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.

§1.24 Censure, suspension, or disbarment of attorneys. (a) The Commission may censure, suspend, or disbar any person having 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) 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 shall be afforded an opportunity to be heard thereon.

§1.25 Former Commissioners and employees. (a) No Commissioner shall, for a period of one year following the termination of his services as a Commissioner, represent any person before the Commission, in a professional capacity, except that this restriction shall not apply to any former Commissioner who has served the full term for which he was appointed.

§ 1.25(b) - § 1.27(d)

(b) No member, officer, or employee of the Commission (1) whose active service with the Commission has terminated but who is receiving pay while on annual leave not taken prior to separation from such active service, or (2) who is in any other leave status, shall appear as attorney or participate in the preparation or handling of any matter before, or to be submitted to, the Commission.

(c) No former member, officer, or employee of the Commission shall act as agent or attorney for any one other than the United States in connection with any particular Commission matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as a member, officer, or employee of the Commission, through decision, approval, disapproval, recommendation, the rendering of service, investigation, or otherwise.

(d) No former member, officer, or employee of the Commission shall, within one year after his employment has ceased, appear personally before the Commission as agent or attorney for any one other than the United States in connection with any particular Commission matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which was under his official responsibility as an officer or employee of the Commission at any time within a period of one year prior to termination of his employment.

(e) Notwithstanding the provisions of paragraphs (c) and (d) of this section, a former member, officer, or employee of the Commission who possesses outstanding scientific or technological qualifications may act as attorney or agent or appear personally in connection with a particular matter in his scientific or technological field, upon certification by the Commission, published in the FEDERAL REGISTER, that the national interest would be served by such action or appearance. This exception does not apply to persons barred from representing others before the Commission under paragraphs (a) or (b) of this section.

§ 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. (Sec. 6(a), 60 Stat.240; 5 U.S.C.1005(a).)

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.

§ 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.

§ 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). Also see §§ 1.102, 1.106(n), and 1.115(h).

§1.44 - 1.45(e) note

§ 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 a hearing examiner or by any person or persons acting pursuant to delegated authority.

(b) Requests requiring action by a hearing examiner 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.

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

(b) 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.

(c) Additional pleadings. Additional pleadings may be filed only if specifically requested or authorized by the Commission.

(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(g) 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 conflict with the provisions of this section, the specific provisions are controlling. See, in particular 1.294 (c) and 1.298(a).

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 papers 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 papers 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 duration of the emergency and will consider motions, replies thereto or other papers filed after the filing date.

(c) If a motion for extension of time in which to file papers in proceedings other than notice and comment rule making proceedings is filed less than 7 days prior to the day for filing the papers, 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.

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.

(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: Provided, however, that formal complaints, including supplemental, cross, and amended complaints, filed under section 208 of the Communications Act will be served by the Commission.

(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) 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.

When a party is represented by an attorney of record in a formal proceeding, service shall be made upon such attorney.

(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.

(f) Service by mail is complete upon mailing.

(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.

1.48 Length of pleadings. (a) Affidavits, statements, table 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 request for permission to file pleadings in excess of the length prescribed by the provisions of this chapter shall not be routinely granted. Where filing period is 10 days or less, the request shall be made within 2 business days after the period begins to run. Where the filing 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 two business days after the Commission acts upon the request.

1.49 Specifications as to pleadings and documents. (a) All pleadings and documents filed in any proceeding shall be on paper 8 and one half by 11 inches. The impression shall be double spaced, except that long quotations shall be single spaced and indented. All papers shall be typewritten or prepared by mechanical processing methods. The left hand margin shall not be less than 1 and one half inches wide. Both sides of the paper may be used. (If both sides are used, it is the right hand margin of even numbered pages which shall be at least 1 and one half inches wide; and the pleading shall be bound--e.g., stapled twice-- in the left hand margin, so as to open like a book). The foregoing shall not apply to printed briefs, official publications, charts and maps, original documents, or admissible copies thereof, offered as exhibits, especially 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 paragtaphed, which should be a succinct, but accurate and clear condensation of the substance of the filing. It should not be a near 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) Hearings exhibits and exhibits or appendicies accompanying any document or pleading submitted to the Commission.

Note-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.

1.50 Specifications as to briefs. Briefs may be printed, typewritten, mimeographed, multigraphed, or multilithed. Printed briefs shall be in 10- or 12-point type, on good unglazed paper, 5-7/8 inches wide by 9 inches long, with inside margins not less than 1-1/2 inches wide, and with double spaced text and single spaced quotations. Typewritten, mimeo, multigraphed, or multilithed briefs shall conform to the specifications for pleadings and documents set for in 1.49.

1.51 Number of copies of pleadings, briefs and other reports. Except as otherwise specified provided in the Commission's rules and regulations, the number of copies of pleadings, briefs, and other papers to be filed is follows:

(a) In hearing proceedings, the following number of copies shall be filed:

(1) If the paper filed relates to a matter to be acted upon by the presiding officer or the Chief Administrative Law Judge, an original and 6 copies shall be filed.

(2) If acted on by the Review Board, an original and 11 copies.

(3) If acted on by the Commission, an original and 14 copies.

(4) If more than one person presided (is presiding) an additional copy for each such additional person.

(b) In rulemaking proceedings which have not been designated for hearing, an original and 5 copies of all papers shall be filed. The distribution of such copies shall be as follows:

Dockets (original and 1) -----	2
Bureau -----	2
Secretary -----	1
Information office -----	1
Total -----	6

Participants filing the required 6 copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. The distribution of such copies shall be as follows:

Commissioners -----	5
Dockets (original and 1)-----	2
Bureau -----	2
Information office -----	1
Total -----	10

However, members of the general public who wish to express their interest by participating informally in a rulemaking proceeding may do so by submitting one copy of their comments, without regard to form, provided only that the Docket Number is specified in the heading. Also, such informal participants who wish responsible members of the staff to have a personal copy, and to have an extra copy available for the Commissioners, may file an additional 5 copies. The distribution of such copies shall be as follows:

Dockets (original and 1) -----	2
Bureau -----	2
Secretary -----	1
Information office -----	1
Total -----	6

(c) In matters other than rule making and hearing cases, the following number of copies shall be filed:

(1) If the paper filed relates to matters to be acted on by the Commission, an original and 4 copies shall be filed.

(2) If acted on by staff officials under delegated authority, an original and 2 copies.

(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 papers filed in that proceeding.

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. Either the original document, or an electronic reproduction of such original document containing the facsimile signature of the attorney or unrepresented party is acceptable for filing. If a facsimile copy of a document is filed, the signatory shall retain the original until the Commission's decision is final and no longer subject to judicial review. 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 wilful violation of this rule or if scandalous or indecent matter is inserted.

GENERAL APPLICATION PROCEDURES

1.61 Procedures for handling applications requiring Special Aeronautical Study. (a) Except for those services and in those areas being managed by the Regional Management Staff of the Safety and Special Radio Services Bureau, antenna surveys are conducted by the Antenna Survey Branch of the Regional Services Division, Field Operations Bureau.

(b) Each operating bureau or office examines the applications for which it is responsible to ascertain whether or not antenna consideration is required. If such consideration is required, the antenna data is furnished to the Antenna Survey Branch.

(c) The Antenna Survey Branch then ascertains whether applicant is required to submit a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) to the Federal Aviation Administration.

(d) If FAA Form 7460-1 is not required, the application and appropriate antenna painting and lighting specifications are returned to the originating bureau or office for such further action as is necessary.

(e) If FAA Form 7460-1 is required, the originating bureau or office will be so advised. Unless the application includes a statement that FAA Form 7460-1 has been submitted to the Federal Aviation Administration, the originating bureau or office will notify the applicant to do so.

(f) Upon receipt of a report from the Federal Aviation Agency approving a proposed antenna, the Antenna Survey Branch prescribes antenna tower painting and lighting specifications or other conditions in accordance with the provisions of Part 17 of this chapter and forwards this information to the originating bureau or office. If the proposed tower is disapproved, a report of the disapproval is forwarded to the originating bureau or office.

(g) Where one or more antenna farm areas have been designated for a community or communities (see §17.9 of this chapter), an application for a construction permit proposing the erection of an antenna structure over 1,000 feet in heights 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.

§ 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 licensee operating by virtue of this paragraph 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 broadcast and 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 non-continuing nature is otherwise clearly apparent upon the fact of the authorization, all licenses issued by the Commission shall be deemed to be related to an activity of a continuing nature.

§ 1.65 Substantial and significant changes in information furnished by applicants to the Commission. 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. 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 his application so as to furnish such additional or corrected information as may be appropriate. 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.

§ 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.

1.77 Detailed application procedures; cross references. The application procedures set forth in 1.61 - 1.68 are general in nature. 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 Safety and Special Radio Services are set forth in Subpart F of this part.
- (d) Rules governing applications for authorizations in the Experimental Radio Services (other than broadcast) 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 type approval and type acceptance of equipment are set forth in Part 2, Subpart F, of this chapter.
- (h) Rules governing applications for operator licenses are set forth in Part 13 of this chapter.

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 509(a) of the Communications Act; or
- (4) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code.

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 subparagraphs (1) and (2) of paragraph (b) of this section shall not apply to conduct which is subject to a forfeiture penalty under section 202(c), 203(e), 205, 214(d), 219(b), 220(d), 364, 386, or 507 of the Communications Act. The remaining provisions of this section are applicable to such conduct.

(b) Limits on the amount of the forfeiture assessed -- (1) Limit for each violation. The amount of any forfeiture penalty assessed under this section shall not exceed \$2,000 for each violation.

(2) Limits on total penalty. Each day of a continuing violation shall constitute a separate offense, but the total forfeiture which may be imposed under this section for conduct set forth in any notice of apparent liability or notice of opportunity for hearing shall not exceed: (i) \$20,000, if the violator is a common carrier subject to the provisions of the Communications Act, a broadcast station licensee or permittee, or a cable television system operator, ~~except for EEO violations and the violation relates to operation of those facilities.~~

- (ii) \$5000, in the case of any other violator, and
- (iii) No limit on EEO violations for cable operators.

NOTE - For information concerning notices of apparent liability and notices of opportunity for hearing, see paragraphs (e), (f) and (g) of this section

(3) 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, and history of prior offenses, ability to pay, and such other matters as justice may require.

(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 3 years prior to the date on which the notice of apparent liability or notice of opportunity for hearing is issued. In addition, 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.

(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 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. No forfeiture penalty shall be imposed upon any person under this section, if such person does not hold 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. 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) 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).

(f) 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 1.15).

(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.

(g) Notice of opportunity for hearing. The procedures set out in this paragraph will ordinarily be followed only when a hearing is being held for some reason other than the assessment of a forfeiture (such as, to determine whether a renewal application should be granted) and a forfeiture is to be considered as an alternative or in addition to any other Commission action. However, these procedures may be followed whenever the Commission, in its discretion, determines that they will better serve the ends of justice.

(1) Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission will issue a notice of opportunity for hearing. The hearing will be a full evidentiary hearing before an administrative law judge, conducted 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.

(h) Payment. The forfeiture should be paid by check or money order drawn to the order order of the Federal Communications Commission. The Commission does not accept responsibility for cash payments sent through the mails. The check or money order should be mailed to the Fee Collection Section, Finance Branch, Federal Communications Commission, Box 19302, Washington, D. C. 20036, or delivered to the Fee Collection Section, Room 209, 1919 M Street, N.W., Washington, D. C.

(i) Remission and mitigation. In its discretion, the Commission, or its designee, may remit to 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.

(j) Effective date. In accordance with Pub. L. 95-234, February 21, 1978, the provisions of this section govern the imposition of forfeiture involving conduct which took place on or after March 23, 1978. Provisions which govern the imposition of forfeitures involving conduct which took place on or before March 22, 1978 are set out at 47 CFR 1.80, 1.621.

1.81 Deleted.

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 places to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from any Commission field office or from the FCC, Washington, D.C. 20554.

1.84 Procedure with respect to commercial radio operator applications. (a) Upon acceptance of an application for a commercial radio operator license, filed in accordance with Part 13 of this chapter, an examination, if required, is conducted. If the applicant is found qualified and eligible in all respects, the license will be issued. If additional information is necessary to determine an applicant's qualifications or eligibility, or if it appears that a grant of an application would not serve the public interest, the applicant will be notified in writing and given an opportunity to provide additional pertinent information in writing. If, from the information available, it appears that the applicant is not qualified or is ineligible, or that a grant of the application would not serve the public interest, the applicant will be advised thereof in writing and given an opportunity to request, within a specified period of time, that the application be set for hearing. If the applicant does not request, within the specified period, that the application be set for hearing, the application will be denied.

(b) Deleted.
(c) Deleted.

(d) Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice where an application has not yet been designated for hearing; such dismissal may be made with prejudice after an application has been designated for hearing.

§ 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 Safety and Special Radio Services Bureau, with respect to amateur operator licenses, or the Chief of the Field Engineering Bureau, with respect to commercial 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 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 mail the said application. In the event that physical conditions prevent mailing of the application before the expiration of the 15-day period, the application

shall then be mailed 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, **Private Radio Bureau**, or the chief, **Field Operations Bureau**, as the case may be, and said order of 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 office of the Commission in Washington, D. C., 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. (Sec. 303(m), 48 Stat. 1082, as amended; 47 U.S.C. 303(m))

§ 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 will notify the licensee or permittee in writing of the proposed action and the grounds and reasons therefor and direct him to show cause why an order modifying the license or construction permit in the manner proposed by the Commission should not be issued.

(b) Any order to show cause issued in accordance with paragraph (a) of this section will notify the licensee or permittee that he may request, within a period of time to be stated in the order to show cause, that a hearing be held on the proposed modification. In case of timely request, a hearing will be held on the proposed modification, in no event less than 30 days after the receipt of the order to show cause, unless the Commission finds that safety of life or property require the fixing of a shorter period.

(c) In order to avail himself of the right to request a hearing and of the opportunity to appear and give evidence upon the matters specified in the order to show cause, the licensee or permittee, in person or by his attorney, shall, within such period of time as may be specified in the order to show cause, file with the Commission a written statement stating that he requests a hearing and will appear at the hearing and present evidence on the matter specified in the order to show cause. Such written statement must contain a detailed response to the matter specified in the order to show cause, and the permittee or licensee shall be limited in the hearing to matters fairly encompassed within the issues raised by the response.

(d) The right to request a hearing shall, unless good cause is shown in a petition to be filed not later than 5 days before the lapse of the time specified in paragraph (c) of this section, be deemed waived:

(1) In case of failure to timely file a written statement as required by paragraph (c) of this section;

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

(e) Where the right to request a hearing is waived and no written statement has been filed within the period of time specified in the order to show cause, the licensee or permittee will be deemed to consent to the modification as proposed in the order to show cause and a final decision will be issued by the Commission accordingly.

(f) Where the right to request a hearing has been waived, a written statement may be filed within the period of time to be specified in the order to show cause, showing with particularity why the license or construction permit should not be

modified or not so modified as proposed in the order to show cause. In this case, the Commission may, depending upon the facts alleged and proof offered, either call upon the submitting party to furnish additional information under oath, designate the proceeding for hearing, or issue without further proceedings an order modifying the construction permit or license as proposed in the order to show cause or in said written statement. The order to show cause will advise the person against whom it is directed of procedure set forth in this paragraph.

(g) 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 order, and shall be served on the licensee or permittee. (Sec. 12, 66 Stat. 717; 47 U.S.C. 316)

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 investigation. Nothing in this rule shall supersede the application of our ex parte rules to situations described in 1.1203 of these rules.

§ 1.89 Notice of violations. (a) Except in cases of wilfulness or those in which public health, interest, or safety requires otherwise, any licensee who appears 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 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 licensee shall send a written answer, in duplicate, direct to the office of the Commission originating the official notice. If an answer cannot be sent nor an acknowledgment made within such 10-day period by reason of illness or other unavoidable circumstances, 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 shall be given.

§ 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 contain a statement of the matters with respect to which the Commission is inquiring and will call upon the person to whom it is directed (the respondent) to appear before the Commission at a hearing, at a time and

§ 1.91(b) - § 1.92(a)(2)

place stated in the order, but not less than thirty days after the receipt of such order, and give evidence upon the matters specified in the order to show cause. However, if safety of life or property is involved, the order to show cause may specify a hearing date less than thirty days from the receipt of such order.

(c) To avail himself of such opportunity for hearing, the respondent, personally or by his attorney, shall file with the Commission, within thirty days of the service of the order or such shorter period as may be specified therein, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the order. The Commission in its discretion may accept a late appearance. However, an 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 late appearance will be granted only if the Commission determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(d) Hearings 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)

§ 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, calling upon a person to appear at a hearing before the Commission, 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 he will appear at a hearing and present evidence on the matters specified in the order.

(2) The respondent, having filed a timely written appearance as prescribed in § 1.91(c), fails in fact to appear in person or by his attorney at the time and place of the duly scheduled hearing.

(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 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 Chief Hearing Examiner (or the presiding officer if one has been designated) shall, at the earliest practicable date, issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying 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)

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 in which the proceeding was designated for hearing. The order is issued by the officer designated to preside at the hearing or (if no officer has been designated) by the Chief Administrative Law Judge.

(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).

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 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 or Chief Administrative Law Judge, as the case may be, who shall either sign the order, reject the agreement or suggest to the parties that negotiations continue on such portion of the agreement as he considers unsatisfactory or on matters not reached in the agreement. If he rejects the agreement, the hearing shall proceed. If he suggests further negotiations, the hearing will proceed or negotiations will continue, depending on the wishes of parties to the agreement. If he signs the consent order, he shall close the record.

(e) Any party to the proceeding who has not joined in any agreement which is reached may appear 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 records 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 an administrative law judge, the Chief Administrative Law Judge or the Commission. Negotiating papers constitute work products, are available to parties participating in negotiations, but are not routinely available for public inspection.

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.

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(d) 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 1.102-1.120 set forth procedural rules governing reconsideration and review of actions taken pursuant to authority delegated under section 5(d) of the Communications Act, and reconsideration of actions taken by the Commission. As used in 1.102-1.117, the term "designated authority" means any person, panel, or board which has been authorized by rule or order to exercise authority under section 5(d) of the Communications Act.

§ 1.102 Effective dates of actions taken pursuant to delegated authority. (a) Final actions following review of an initial decision. (1) Final decisions of the Review Board, 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.

1.103. Effective dates of Commission actions; finality of Commission actions. (a) Unless otherwise specified by law or Commission rule (e.g. Section 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 subsection (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.

§ 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 decisions of the Review Board following review of an initial decision and final actions taken by members of the Commission's staff on non-hearing matters. They do not apply to interlocutory actions of the Chief Administrative Law Judge in hearing proceedings or to hearing designation orders issued under delegated authority. See 0.351, 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) of these rules. 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 in all cases be acted upon by the Commission.

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 consideration.

(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.

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.

1.106 Petitions for reconsideration.

(a)(1) Petitions for reconsideration of a final Commission action will be acted on by the Commission. Petitions will be acted on by the Commission requesting reconsideration of a final decision by the Review and will be acted on by the Board or certified to the Commission (see §0.361 (b) and (c) of this chapter). Petitions requesting reconsideration of other final actions taken pursuant to delegated 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 participatory actions 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 rule making 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 subsection (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 is present:

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

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

(c) A petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts 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 relied on is required in the public interest.

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

(2) The petition for reconsideration shall also, where appropriate, cite the findings of fact and/or conclusions of law which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and conclusions should be changed. The petition may request that additional findings of fact and 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 the 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 7 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 sections 1.49, 1.51, and 1.52 and shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.

(j) The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny 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.)

NOTE: Petitions for reconsideration of Commission action in rule making proceedings conducted under section 4 of the Administrative Procedure Act need not be served on participants in the proceeding. When such petitions are filed in proper form, public notice of their filing will be given. Oppositions to such petitions may be filed within 10 days after such public notice is given and need be served only on the person who filed the petition. Replies to such oppositions need be served only on the person who filed the opposition.

§1.108 Reconsideration on Commission's own motion. The Commission may, on its own motion, set aside 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) of these rules.

§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.

1.111 Deleted

§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) Except as provided in paragraph (b)(5) of this section 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.

(5) The application for review of a final decision of the Review Board shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented: (i) The board's findings are not supported by substantial evidence in the record as a whole; (ii) the Board's decision involves prejudicial errors of substantive or procedure law; (iii) the Board's decision is arbitrary or capricious; (iv) the Board's decision conflicts with Commission policy or (v) the Board's decision raises a novel or important issue of law or policy which warrants Commission review.

(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, the application for review and any supplement thereto shall be filed within 30 days the date of public notice of such action, as that date is defined in 1.4(b) of these rules.

Oppositions to the application shall be filed within 15 days after the application 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 opposition.

(e)(1) Applications for review of interlocutory rulings made by the Chief Administrative Law Judge (see 0.351) shall be deferred until the time when exceptions are filed unless the Chief Judge certifies the matter to the Commission for review. A matter shall be certified to the Commission only if the Chief Judge determines that it 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. The request to certify the matter to the Commission shall be filed within 5 days after the ruling is made. The application for review shall be filed within 5 days after the order certifying the matter to the Commission is released or such ruling is made. Oppositions shall be filed within 5 days after the application is filed. Replies (if allowed) shall be filed within 5 days after they are requested. A ruling certifying or not certifying a matter to the Commission is final: Provided, however, that the Commission may, on its own motion, dismiss the application for review on the grounds that objections to the ruling should be deferred and raised as an exception. Applications for review of interlocutory rulings made by the Review Board (see 0.365(d)) shall be filed only as part of the application for review of the Board's final decision.

(2) The failure to file an application for review of an interlocutory ruling made by the Chief Administrative Law Judge or the denial of such application by the Commission, shall not preclude any party entitled to file exceptions to the initial decision from requesting review of the ruling at the time when exceptions are filed. Such requests will be considered in the same manner as exceptions are considered.

(3) Applications for review of a hearing designation order issued under delegated authority shall be deferred until applications for review of the final Review Board Decision in the case are filed, unless the presiding Administrative Law Judge certifies such an application for review to the Commission. A matter shall be certified to the Commission only if the presiding administrative Law Judge 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 ruling refusing to certify a matter to the Commission is not appealable. In addition, the Commission may dismiss, without stating reasons, an application for review that has been certified and direct that the objections to the hearing designation order be deferred and raised when applications for review of the final Review Board Decision are filed. A request to certify a matter to the Commission shall be filed with the presiding Administrative Law Judge within 5 days after the designation order is released. Any application for review authorized by the Administrative Law Judge 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.

(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, D.C., 20554. 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.

Applications for review of final decision of the Review Board, and oppositions thereto, shall not exceed 10 double-spaced 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. Applications for review of other actions, and oppositions thereto, shall not exceed 25 double-spaced typewritten pages. Replies to oppositions shall be filed only if requested by the Commission and, if requested, shall not exceed 5 double-spaced typewritten pages. If the Commission grants review of a Review Board final decision, the parties, may file the briefs and reply briefs, which shall not exceed 25 double-spaced typewritten pages. Briefs shall be filed within 30 days after release of the order granting review. Reply briefs shall be filed within 10 days after the last day for filing briefs.

(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. (ss 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. (Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155)

§ 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.

§ 1.120 Protests of grants without hearing. (a) The provisions of this section shall not be applicable to any application: (1) Filed on or after December 12, 1960; (2) filed before December 12, 1960, but substantially amended (as defined in the applicable provisions of this chapter) on or after that date; and (3) filed before December 12, 1960, and not thereafter substantially amended, but with respect to which the rules in this chapter provide an opportunity for petitions to deny to be filed under section 309 of the Communications Act, as amended. See §§ 1.580 and 1.962.

(b) Where any instrument of authorization for a radio station, other than a license pursuant to a construction permit, has been granted without a hearing, any party in interest may file a protest directed to such grant and request a hearing on the application granted. Such protest shall be signed by the protestant and subscribed to under oath. Such protest must be filed with the Commission within 30 days after release of the document containing the full text of such action, or in case such a document is not released, after release of a "Public Notice" announcing the action in question and must separately set forth:

(1) Such allegations of fact as will show the protestant to be a party in interest, i.e., a person aggrieved or whose interests are adversely affected by the Commission's authorization, protest of which is sought. Each such allegation of fact shall be separately stated.

(2) Facts indicating the reasons why the grant was improperly made or would otherwise not be in the public interest. Each such reason shall be separately stated, and facts in support thereof shall be specified in detail and shall not include general non-specific conclusory arguments and allegations.

(3) The specific issues upon which protestant wishes a hearing to be held, which issues must relate directly to a matter specified with particularity as part of subparagraph (2) of this paragraph.

(c) Arguments and citations of authority may be set forth in a brief accompanying the protest but must be excluded from the protest itself.

(d) Oppositions to protests and briefs in support thereof shall contain all material, including that pertinent to the determination referred to in paragraph (1) of this section, deemed appropriate to the Commission's resolution of the protest. Such oppositions and supporting briefs must be filed within 10 days after the filing of such protest, and any replies to such oppositions must be filed within 5 days after the filing of the oppositions.

(e) Protests, oppositions, and replies shall be filed with the Commission in original and 14 copies and shall be accompanied by proof of service upon the grantee or the protestant, as the case may be, and/or their respective attorneys.

(f) The Commission may upon consideration of a protest direct either the protestant or grantee or both to submit further statements of fact under oath relating to the matters raised in the protest.

(g) Within 30 days from the date of the filing of the protest, the Commission will enter findings as to whether such protest meets the requirements set forth in paragraphs (b)(1) and (2) of this section. If the Commission finds that one of these requirements is not met, it will dismiss the protest. If the Commission finds that these requirements are met, it will designate the application in question for hearing. As to issues which the Commission believes present no grounds for setting aside the grant, even if the facts alleged were to be proven, the Commission may designate such issues for oral argument only. The other issues will be designated for evidentiary hearing except that the Commission may redraft the issues in accordance with the facts or substantive matters alleged in the protest and may also specify such additional issues as it deems desirable. In any evidentiary hearing subsequently held upon issues specified by the Commission, upon its own initiative or adopted by it, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the grantee. With respect to issues resulting from facts set forth in the protest and not adopted or specified by the Commission on its own motion, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the protestant.

(h) The procedure in such protest hearing shall be governed by the provisions of Subpart B of this part, except as otherwise provided in this section.

(i) Pending hearing and decision, the effective date of the Commission's action to which protest is made shall be postponed to the effective date of the Commission's decision after hearing, unless authorization involved is necessary to the maintenance or conduct of an existing service or unless the Commission affirmatively finds that the public interest requires that the grant remain in effect, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing.
(Sec. 7, 66 Stat. 715, as amended, See, in particular, sec. 4(a) and (d), 74 Stat. 889, 892; 47 U.S.C. 309)

SUBPART B -- HEARING PROCEEDINGS

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: For special provisions relating to AM broadcast stations applications involving other North American countries see 73.3570.

§ 1.202 Official reported; transcript. The Commission will designate from time to time an official reporter for the recording and transcribing of hearing proceedings. No transcript of the testimony taken, or argument had, at any hearing will be furnished by the Commission, but will be open to inspection under § 0.453 of this chapter. Copies of such transcript, if desired, may be obtained from the official reporter upon payment of the charges therefor.

§ 1.203 The record. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, 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.

§ 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.

§ 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 §§ 1.291-1.298 of this chapter.

(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 §§ 1.101-1.120.

§ 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 Commissick, the Review Board, the Chief Hearing Examiner, or the presiding officer. If it is to be acted upon by the presiding officer, he shall be identified by name.

§ 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.

PRELIMINARY PROCEDURES

§ 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 is mailed to the applicant by the Secretary of the Commission and is published in the FEDERAL REGISTER. Reasonable notice of hearing will be given to the parties in all proceedings; and, whenever possible, the Commission will give at least 60 days notice of comparative hearings.

(c) In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, shall, within 20 days of the mailing of the notice of designation for hearing by the Secretary, file with the Commission, in triplicate, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified in the order. 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 any person found to be a party in interest.

(e) In order to avail himself of the opportunity to be heard, any person named as a party pursuant to paragraph (d) of this section shall, within 20 days of the mailing of the notice of his designation as a party, file with the Commission, in person or by attorney, a written appearance in triplicate, stating that he will appear at the hearing. Any person so named who fails to file this written statement within the time specified, shall unless good cause for such failure is shown, forfeit his hearing rights.

§ 1.223 Petitions to intervene. (a) Where, in cases involving applications for construction permits and station licenses, or modifications or renewals thereof, the Commission has failed to notify and name as a party to the hearing any person who qualified 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 such person's interest is based upon a claim that a grant of the application would cause objectionable interference under applicable provisions of this chapter to such person as a licensee or permittee of an existing or authorized station, the petition to intervene must be

accompanied by an affidavit or a qualified radio engineer which shall show, either by following the procedures prescribed 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, the extent of such interference. Where the person's status as a party in interest is established, the petition to intervene will be granted.

(b) Any person desiring to participate as a party in any hearing 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 an application 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 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 an application 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. Such petition shall be accompanied by the affidavit of a person with knowledge of the facts set forth in the petition, and where petitioner claims that a grant of the application would cause objectionable interference under applicable provisions of this chapter, the petition to intervene must be accompanied by the affidavit of a qualified radio engineer showing the extent of such alleged interference according to the methods prescribed in paragraph (a) of this section. If, in the opinion of the presiding officer, good cause is shown for the delay in filing, he may in his discretion grant such petition or may permit intervention limited to particular issues or to a particular stage of the proceeding.

1.224 Motion to proceed in forma pauperis. (a) A motion to proceed in forma pauperis may be filed by an individual, a corporation, an 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 license, 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 all estimates 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 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.

1.125 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 case of requests bearing more than 1 signature, notice of hearing will be given to the person first signing unless the requests indicates that such notice should be sent to someone other than such person.

(b) No person shall be precluded from giving any relevant, material, and competent testimony at the hearing because he lacks a sufficient interest to justify his intervention as a party in the matter.

(c) When a hearing is held, 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, 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.

§1.227 Consolidations. (a) The Commission, upon motion or upon its own motion, will, where such action will best conduce to the proper dispatch of business and to the ends of justice, consolidate for hearing:

(1) Any cases which involve the same applicant or involve substantially the same issues, or

(b)(1) In broadcast cases, except as provided in paragraph (b)(5) of this section, and except as otherwise provided in 1.1601, et seq., no application will be consolidated for hearing with a previously filed application or applications unless such applications, or such application as amended, if amended so as to require a new file number, is substantially complete and tendered for filing by the close of business on the day preceding the day designated by Public Notice as the day any one of the previously filed applications is available and ready for processing.

(b)(2) In other than broadcast, common carrier, and safety and special radio services cases, any application that is mutually exclusive with another application or applications already designated for hearing will be consolidated for hearing with such other application or applications only if the later application in question has been filed within 5 days after public notice has been given in the Federal Register of the Commission's order which first designated for hearing the prior application or applications with which such application is in conflict.

(3) In common carrier cases, other than Public Coast stations in the Maritime Mobile Services which are provided for in subparagraph (4) of this paragraph, and except those involving Domestic Public Radio Services, any application that is mutually exclusive with another previously filed application will be considered only if the later filed application is substantially complete and tendered for filing prior to the close of business on the day preceding the day the earlier filed application is designated for hearing. In the Domestic Public Radio Services no application will be consolidated for hearing as mutually exclusive with a previously filed application or applications unless such application, or such application as amended so as to constitute a major change therein as defined in §21.33 of this chapter, is substantially completed and tendered for filing by whichever date is earlier: (i) The close of business 1 business day preceding the day on which the Commission designates the earlier filed application for hearing; or (ii) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will, for the purpose of this section, be considered to be a newly filed application. Where major changes which do not relate to the mutually exclusive aspect of a proceeding are warranted, or in the case of multiple mutually exclusive issues where the warranted major changes serve to resolve one or more of the issues but do not relate to the mutually exclusive aspect of the proceeding, such changes or amendments will not serve to alter the existing mutually exclusive status so long as new conflicts are not created.

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§1.227(b) (4) - 1.229 (d)

(4) This subsection applies when mutually exclusive applications are filed in the Private Radio Services or when there are more applications for initial licenses than can be accommodated on available frequencies. In such cases, the applications either will be consolidated for hearing or designated for random selection (See 1.972) if the later application or applications are received by the Commission's offices in Gettysburg, Pennsylvania in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. An application which is substantially amended, (as defined by 1.962(c)), will, for the purpose of this section, be considered to be a newly filed application as of the receipt date of the amendment.

(5) Any mutually exclusive application filed after the date prescribed in subparagraph (1), (2), (3) or (4) of this paragraph will be dismissed without prejudice and will be eligible for refiling only after a final decision is rendered by the Commission with respect to the prior application(s) or after such application(s) are dismissed or removed from the hearing docket.

(6) An application which is mutually exclusive with an application for renewal of license of a broadcast station will be designated for comparative hearing with such license renewal application if it is substantially complete and tendered for filing no later than the date prescribed in §1.516(e).

§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.

(b) Such motions must be filed within 15 days after the full text or a summary of the order designating an application for hearing has been published in the Federal Register. In comparative broadcast proceedings (including comparative renewal proceedings), however, such motions shall be filed within 30 days after the full text or a summary of the designation order has been published in the Federal Register. Any person desiring to file a motion to modify the issues after expiration of the above specified periods 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 modification 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 each 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.

PRESIDING OFFICER

§ 1.241 Designation of presiding officer. (a) Hearings will be conducted by the Commission, by one or more commissioners, or by an examiner designated pursuant to section 11 of the Administrative Procedure Act. If a presiding officer becomes unavailable to the Commission prior to the taking of testimony, another presiding officer will be designated.

(b) Unless the Commission determines that due and timely execution of its functions requires otherwise, presiding officers shall be designated, and notice thereof released to the public, at least 10 days prior to the date set for hearing.

§ 1.243 Authority of presiding officer. From the time he is designated to preside until issuance of his decision or the transfer of the proceeding to the Commission or to another presiding officer, the presiding officer shall have such authority as is vested in him by law and by the provisions of this chapter, including authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas;
- (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 he is required to rule during the course of the hearing;
- (h) Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (i) Dispose of procedural requests or similar matters, as provided for in § 0.341 of this chapter;
- (j) Take actions and make decisions in conformity with
the Administrative Procedure Act.
- (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.

§1.245 Disqualification of presiding officer. (a) In the event that a presiding officer deems himself disqualified and desires to withdraw from the case, he shall notify the Commission of his withdrawal at least 7 days prior to the date set for hearing.

(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. Such affidavit shall be filed not later than 5 days before the commencement of the hearing unless, for good cause shown, additional time is necessary.

(2) The presiding officer may file a response to the affidavit; and if he believes himself not disqualified, shall so rule and proceed with the hearing.

(3) The person seeking disqualification may except to a ruling of non-disqualification and, in that event, shall do so at the time the ruling is made. Unless exception is taken to the ruling at this time, the right to request withdrawal of the presiding officer shall be deemed waived.

(4) If exception to the ruling is taken, 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.

§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 the presiding officer without additional pleadings.

PREHEARING PROCEDURES

§1.248 Prehearing conference; hearing conferences. (a) The Commission, on its own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to hearing, or to submit suggestions in writing, for the purpose of considering, among other things, the matters set forth in paragraph (c) of this section. The initial prehearing conference shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date.

(b) (1) The presiding officer (or the Commission or a panel of commissioners in a case over which it presides), on his own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to or during the course of a hearing, or to submit suggestions in writing, for the purpose of considering any of the matters set forth in paragraph (c) of this section. The initial prehearing conference shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date.

(2) 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 prehearing motions. Where the circumstances so warrant, the presiding officer shall, promptly after the hearing is ordered, call a preliminary prehearing conference, to inquire into the use of available procedures contemplated by the parties and the time required for their completion to formulate a schedule for their completion, and to set a date for commencement of the hearing.

(c) In conferences held, or in suggestions submitted, pursuant to paragraphs (a) and (b) of this section, the following matters, among others, may be considered:

- (1) The necessity or desirability of simplification, clarification, amplification, or limitation of the issue;
- (2) Admission of all facts and of the genuineness of documents (see §1.246), and the possibility of stipulating with respect to facts;
- (3) The procedure at the hearing;
- (4) The limitation of the number of witnesses;
- (5) In cases arising under Title II of the Communications Act, the necessity or desirability of amending the pleadings and offers of settlement or proposals of adjustment; and
- (6) In cases involving the comparative broadcast applications;
 - (i) Narrowing the issues or areas of inquiry and proof at the hearing;
 - (ii) (Deleted)
 - (iii) Reports and letters relating to surveys or contracts;
 - (iv) Assumptions regarding the availability of equipment;
 - (v) Network programming;
 - (vi) Assumptions regarding availability of network proposed;

(vii) The method of handling evidence relating to the past co-operation of existing stations owned and/or operated by the applicants with organizations in the area;

- (ix) Proof of contracts, agreements, or understandings reduced to writing;
- (x) Stipulations;
- (xi) Need for dispositions;
- (xii) The numbering of exhibits;
- (Xiii) The order/offer of proof with relationship to docket number.
- (xiv) The date for the formal hearing; and
- (xv) Other matters as may expedite the conduct of hearing.

(c)(7) In proceedings in which consent agreements may be negotiated (see §1.93), the parties shall be prepared to state at the initial prehearing conference whether they are at that time willing to enter negotiations leading to a consent agreement.

(d) This paragraph applies to broadcast proceedings only.

(1) At the prehearing conference prescribed by this section, the parties to the proceeding shall be prepared to discuss the advisability of reducing any or all phases of their affirmative direct cases to written form.

(2) In hearings involving applications for new, improved and changed facilities and in comparative hearings involving only applications for new facilities, where it appears that it will contribute significantly to the disposition of the proceeding for the parties to submit all or any portion of their affirmative direct cases in writing, the presiding officer may, in his discretion, require them to do so.

(3) In other broadcast proceedings, where it appears that it will contribute significantly to the disposition of the proceeding for the parties to submit all or any portion of their affirmative direct cases in writing, it is the policy of the Commission to encourage them to do so. However, the phase or phases of the proceeding to be submitted in writing, the dates for the exchange of the written material, and other limitations upon the effect of adopting the written case procedure (such as whether material ruled out as incompetent may be restored by other competent testimony) is to be left to agreement of the parties as approved by the presiding officer.

(e) An official transcript of all conferences shall be made.

(f) The presiding officer may, upon the written request of a party or parties, approve the use of a speakerphone as a means of attendance at a prehearing conference if such use is found to conduce to the proper dispatch of business and to the ends of justice. The party or parties receiving permission to use a speakerphone will deal directly with the telephone company involved, will assume full responsibility for installation operation and removal of the speakerphone, and shall bear all consequent expenses.

§1.249 Prehearing Statement. Immediately upon convening the formal hearing in any proceeding, the presiding officer shall enter upon the record a statement reciting all actions taken at the prehearing conferences, and incorporating into the record all of the stipulations and agreements of the parties which are approved by him and any special rules which he may deem necessary to govern the course of the proceeding.

§1.250 Discovery and preservation of evidence; cross-reference. For provisions relating to prehearing discovery and preservation of admissible evidence, see §§1.311-1.325.

§1.251 Summary decision. (a) Any party to an adjudicatory proceeding may move for summary decision of all or any of the issues set for hearing. The motion shall be filed at least 20 days prior to the date set for commencement of the hearing. 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 at the hearing.

(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 discretion, set the matter for argument and 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 to the need for cross examination, 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 he cannot, for good cause shown, present by affidavit or otherwise facts essential to justify his 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, no hearing will be held. The presiding officer will issue a Summary Decision, which is subject to appeal or review in the same manner as an Initial Decision. See §§1.271-1.282. 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 will proceed 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. He 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, he 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, he will certify the matter to the Commission with his findings and recommendations, 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, he will certify the matter to the Commission, with his findings and the recommendations, for a determination as to whether the facts warrant addition of an issue as to the character of that party.

HEARING AND INTERMEDIATE DECISIONS

§1.253 Time and place of hearing. (a) The Commission will specify the day on which and the place at which any hearing is to commence.

(b) The presiding officer will specify the days on which subsequent hearing sessions are to be held.

(c) If the Commission specified that a hearing is to commence in the District of Columbia, it shall be moved therefrom only by order of the Commission.

(d) If the Commission specifies that a hearing is to commence at a field location, all appropriate proceedings will be completed at such location before the hearing is moved therefrom. When such proceedings are completed, the presiding officer may move the hearing from the field location specified to another appropriate field location or to the District of Columbia.

§1.254 Nature of the hearing; burden of proof. Any hearing upon an application shall be a full hearing 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.

§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.

§1.258 Closing of the hearing. The record of hearing shall be closed by an announcement to that effect at the hearing by the presiding officer when the taking of testimony has been concluded. In the discretion of the presiding officer, the record may be closed as of a future specified date in order to permit the admission into the record of exhibits to be prepared: Provided, The parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing which has been adjourned may not be closed by such officer prior to the day on which the hearing is to resume, except upon 10 days' notice to all parties to the proceeding.

§1.260 Certification of transcript. After the close of the hearing, the complete transcript of testimony, together with all exhibits, shall be certified as to identity by the presiding officer and filed in the office of the Secretary of the Commission.

Notice of such certification shall be served on all parties to the proceedings.

§1.261 Corrections to transcript. Within 10 days after the date of notice of certification of the transcript, any party to the proceeding may file with the presiding officer a motion requesting the correction of the transcript, which motion shall be accompanied by proof of service thereof upon all other parties to the proceedings. 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 on his own initiative, may specify corrections to be made in the transcript on 5 days' notice.

§1.263 Proposed findings and conclusions. (a) Each party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law: provided, however, That the presiding officer may direct any party other than Commission counsel to file proposed findings of fact and conclusions, briefs, memoranda of law. Such proposed findings of fact, conclusions, briefs, and memoranda of law shall be filed within 20 days after the record is closed, unless additional time is allowed.

(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, memoranda of law, when directed to do so, may be deemed a waiver of the right to participate further in the proceeding.

§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 particularly all basic evidentiary facts developed on the record (with appropriate citations to the transcript of record or exhibits 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.

§1.267 Initial and recommended decision. (a) Except as provided in this paragraph, in §§1.94, 1.251 and 1.274, or where the proceeding is terminated on motion (see §1.302), 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 201-105 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) The authority of the Presiding Officer over the proceedings shall cease when he has filed his Initial or Recommended Decision, or if it is a case in which he is to file no decision, when he has certified the case for decision: PROVIDED, however, That he shall retain limited jurisdiction over the proceeding for the purpose of effecting certification of the transcript and corrections to the transcript, as provided in sections 1.260 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.

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, a panel of commissioners, or by the Review Board, in which event the commissioner, panel, or board shall exercise the authority and perform the functions which would otherwise have been performed by the Commission under §§ 1.273 - 1.282.

NOTE: Parties to any proceeding designated for hearing prior to August 31, 1961, are entitled to file exceptions to initial decisions with the Commission and to oral argument before the Commission en banc.

(Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155)

§ 1.273 Waiver of initial or recommended decision. At the conclusion of the hearing or within 20 days thereafter, 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, a panel of commissioners, or by the Review Board, 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.

§ 1.274 Certification of the record to the Commission for initial or final decision.

(a) Where the presiding officer is available to the Commission, 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 initial or final decision. Unless the Commission finds that due and timely execution of its functions imperatively and unavoidably requires that no recommended decision be issued, the presiding officer will prepare and file a recommended decision, which will be released with the Commission's initial or final decision.

(b) Where the presiding officer becomes unavailable to the Commission after the taking of testimony has been concluded, the Commission may direct that the record in a pending proceeding be certified to it for initial or final decision. In that event, the record shall be certified to the Commission by the Chief Hearing Examiner.

(c) (1) Where the presiding officer becomes unavailable to the Commission after the taking of evidence has commenced but before it has been concluded, the Commission may order a rehearing before another presiding officer designated in accordance with § 1.241.

§ 1.274(c)(2)

(2) Upon a finding that due and timely execution of its functions imperatively and unavoidably so requires, the Commission may (as an alternative) order that the hearing be continued by another presiding officer designated in accordance with § 1.241 or by the Commission itself. In that event, the officer continuing the hearing shall, upon completion of the hearing, certify the proceeding to the Commission for an initial or final decision. Unless the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably requires that no recommended decision be issued, the officer continuing the hearing shall prepare and file a recommended decision, to be released with the Commission's initial or final decision. If all the parties expressly consent, and if the Commission does not order otherwise, the officer continuing the hearing may prepare an initial decision.

§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 been 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 be applicable with respect to this paragraph.

(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.

§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 50 double-spaced typewritten pages in length. Within 10 days, or such other time as the Commission 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. 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 in its discretion will, by order, grant or deny the request for oral argument. Within five days after release of the Commission's 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 written notice of intention to appear and participate in oral argument; and failure to file 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 of the Commission, 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 or member of the Review Board 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.

§ 1.279 Limitation of matters to be reviewed. 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).

§ 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 subparagraph (1) of this paragraph; and

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

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. It also acts on interlocutory pleadings filed in matters or proceedings which are before the Commission

(2) The Review Board acts on interlocutory pleadings in proceedings which are before the Board.

(3) The Chief Hearing Examiner acts on those interlocutory matters listed in § 0.351 of this chapter.

(4) All other interlocutory matters in hearing proceedings are acted on by the presiding officer. See §§ 0.218 and 0.341 of this chapter.

(5) Each interlocutory pleading shall indicate in its caption whether the pleading is to be acted upon by the Commission, the Review Board, the Chief Hearing Examiner, or the presiding officer. If the pleading is to be acted upon by the presiding officer, he 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, and 1.52 of this chapter.

(c)(1) Procedural rules governing interlocutory pleadings are set forth in §§ 1.292-1.298 of this chapter.

(2) Rules governing appeal from, and reconsideration of, interlocutory rulings made by the presiding officer are set forth in §§ 1.301 and 1.303 of this chapter.

(3) Rules governing the review of interlocutory rulings made by the Review Board or the Chief Hearing Examiner are set forth in §§ 1.101, 1.102(b), 1.115, and 1.117 of this chapter. Petitions requesting reconsideration of an interlocutory ruling made by the Commission, the Review Board, or the Chief Hearing Examiner will not be entertained. See, however, § 1.113 of this chapter.

(d) No initial decision shall become effective under § 1.276(e) until all interlocutory matters pending before the Review Board of 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 or the Review Board has expired.

§1.294 Oppositions and replies. (a) Any party to a hearing may file an opposition to an interlocutory request filed in that proceeding.

(b) Except as provided in paragraph (c) of this section, oppositions shall be filed within 4 days after the original pleading is filed, and replies to oppositions will not be entertained. See, however §1.712 of this chapter.

(c) Oppositions to pleadings in the following categories shall be filed within 10 days after the pleading is filed. Replies to such oppositions shall be filed within 5 days after the opposition is filed, and shall be limited to matters related in the opposition.

(1) Petitions to amend, modify, enlarge, or delete the issues upon which the hearing was ordered.

(2) Deleted.

(3) Petitions by adverse parties requesting dismissal of an application.

(4) Joint requests for approval of agreements filed pursuant to §1.525 of this chapter.

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

§1.296 Service. No pleading filed pursuant to §1.292 or §1.294 will be considered unless it is accompanied by proof of service upon the parties to the proceeding.

§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.

§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 discretion of the presiding officer, rulings on interlocutory matters may be made orally at the hearing. The presiding officer may, in his discretion, state his reasons on the record or subsequently issue a written statement of the reasons for his ruling, either separately or as part of the initial decision.

(c) Deleted.

APPEAL AND RECONSIDERATION OF PRESIDING OFFICER'S RULING

§1.301 Appeal from presiding officer's interlocutory ruling; 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 the presiding officer's 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 the presiding officer's 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) Reserved

(4) Rulings granting a joint request filed under §1.525 without terminating the proceeding are appealable by any party as a matter of right.

(5) **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 for such period as is reasonably necessary for the client to secure new counsel and for counsel to familiarize himself with the case).**

(b) Other interlocutory rulings. Except as provided in paragraph (a) of this section, appeals from interlocutory rulings of the presiding officer 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. Readings responsive to the request shall be filed only if they are requested by the presiding officer. 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. 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. If the presiding officer allows or disallows the appeal, his ruling is final: Provided, however, That the Commission may, on its own motion, dismiss an appeal allowed by the presiding officer on the ground that objection to the ruling should be deferred and raised as an exception. In the discretion of the presiding officer, the request for permission to file appeal may be made orally, on the record of the proceeding. **The request** may be disposed of orally.

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

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

(3) If the presiding officer modifies the 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 by him 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 which 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 upon 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.

§1.302 Appeal from presiding officer's final ruling; 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 or the Review Board 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 or the Review Board on its own motion. If an appeal is filed, or if the Commission or the Review Board 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) If the Commission would have reviewed an initial decision in the proceeding (see §0.365(a) of this chapter), the Commission will act on the appeal. In all other cases, the appeal will be acted on by the Review Board. The caption of the appeal shall specify whether the appeal is to be acted on by the Commission or the Review Board.

(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.

THE DISCOVERY AND PRESERVATION OF EVIDENCE

§1.311 General. Sections 1.311-1.325 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 at the hearing, or 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 reasonable, calculated to lead to the discovery of admissible evidence. The use of these procedures against the Commission is subject to the 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 purpose 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 0.451-0.467 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 0.451-0.467 . See 0.451(b)(5) of this chapter.

(4) Subject to subparagraphs (1) through (3) of this paragraph, 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 before or after the prehearing conference provided for in 1.248(a)(1). 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 on the time to be allowed for such use.

(d) Who shall act. Actions provided for in §§1.311-1.325 will, in most cases, be taken by the officer designated to preside at the hearing (see §1.241). If the proceeding, or a particular matter to which the action relates, is before the Commission, the Review Board, a commissioner or panel of commissioners, or the Chief Hearing Examiner, the action will be taken by such officer or body. The term "presiding officer", as used in §§1.311-1.325 shall be understood to refer to the appropriate officer or body. See §§0.341, 0.351, 0.365, and 1.271 of this chapter.

(e) 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. An original and one copy of the stipulation shall be filed with the Secretary of the Commission, and a copy of the stipulation shall be served on the presiding officer, at least 3 days before the scheduled taking of the deposition.

§1.313 Protective orders. The use of the procedures set forth in §§1.311-1.325 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. The order may specify any measures, including the following, to assure proper conduct of the proceeding or to protect any party or dependent 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

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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.

§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 in writing to every other party to the person to be examined, and to the presiding officer. An original and three copies of the notice shall be filed with the Secretary of the Commission. 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.

§1.316 Depositions upon written interrogatories--notice and preliminary procedure.

(a) Service of interrogatories; notice. A party to the hearing proceeding desiring to take the deposition of any person upon written interrogatories shall serve the interrogatories upon every other party and shall give a minimum of 35 days notice in writing to every other party and to the person to be examined. An original and three copies of the interrogatories and the notice (and of all related pleadings) shall be filed with the Secretary of the Commission. A copy of the interrogatories and the notice (and of all related pleadings) shall be served on the presiding

officer. 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) Additional interrogatories. Within 7 days after the filing and service of the original interrogatories, any other party to the proceeding may, in the same manner, file and serve additional interrogatories to be asked of the same witness at the same time and place, with notice to the witness of any additional matters upon which he will be examined.

(c) Cross interrogatories. Within 14 days after the filing and service of the original interrogatories, any party to the proceeding may, in the same manner, file and serve cross interrogatories, which shall be limited to matters raised in the original or in the additional interrogatories.

(d) Responsive pleadings. (1) Within 21 days after service of the original interrogatories, any party to the proceeding may move to limit or suppress any original, additional or cross interrogatory, and the person to be examined may file a motion opposing the taking of depositions. See §1.319(a).

(2) Within 28 days after service of the original interrogatories, a response to a motion to limit or suppress any interrogatory or to a motion opposing the taking of depositions may be filed by any party to the proceeding.

(3) Additional pleadings should not be filed and will not be considered.

(e) Protective order. On a motion to limit or suppress or an opposition motion filed under paragraph (d) 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.

(f) Authority to take depositions. (1) If an opposition motion is not filed within 21 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.

NOTE: The computation of time provisions of §1.4(g) shall not apply to interrogatories and pleadings filed under the provisions of this section.

§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 subpoena as provided in §§1.331-1.340.

(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 depositions, 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 waived 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.

§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 seasonable 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 shall be received subject to 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, telegraph 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, by telephone, to counsel who submitted statements and to the officer taking the depositions. 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.

§1.321 Use of depositions at the hearing. (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 at the hearing 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 subparagraph (2) of paragraph (d) 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) To the extent that the affirmative direct case of a party is made in writing pursuant to §1.248(d), the deposition of any witness, whether or not a party, may be used by any party for any purpose, provided the witness is made available for cross-examination. In all cases, the deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds: (i) That the witness is dead; or (ii) that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(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.

§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 or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories shall be served upon all parties to the proceeding. An original and three copies of the interrogatories, answers, and all related pleadings shall be filed with the Secretary of the Commission. A copy of the Interrogatories, answers and all related pleadings shall be served on the presiding officer.

(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. An order to compel an answer is not subject to appeal.

§1.325 Discovery and production of documents and things for inspection, copying, or photographing. (a) Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of §1.313, the presiding officer may (1) order any party except the Commission (see paragraph (b) of this section) to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by §1.311(b) and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose 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). The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

(b) Any party seeking the production of Commission records should proceed under 0.460 or 0.461 of this chapter. See 0.451-0.467.

SUBPONEAS

§1.331 Who may sign and issue. Subpoenas requiring the attendance and testimony of witnesses, and subpoenas 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 as follows:

(a) Hearings before the Commission en banc, and individual commissioner, or a panel of commissioners: By any commissioner participating in the conduct of the hearing.

(b) Hearings before a hearing examiner: By the hearing examiner or, in his absence, by the Chief Hearing Examiner.

§1.333 Requests for issuance of subpoena. (a) Unless submitted on the record while a hearing is in progress, requests for a subpoena ad testificandum shall be submitted in writing.

(b) Requests for a subpoena 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 provided thereby. Where the subpoena duces tecum request is directed to a nonparty to the proceeding, the presiding officer may issue the same, upon request, without an accompanying subpoena 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 subpoena duces tecum.

(c) All requests for subpoenas shall be supported by a showing of the general relevance and materiality of the evidence sought.

(d) Requests for subpoenas shall be submitted in triplicate, but need not be served on the parties to the proceeding.

(e) Requests for issuance of a subpoena 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 subpoena 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 subpoena request may ask that a subpoena 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 subpoena request will be subject to the provisions of §1.313 and paragraph (b) of this section.

(f) Requests for issuance of a subpoena 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 subpoena 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.

§1.334 Motions to quash. Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena 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 subpoena or of a motion to quash.

§1.336 Service of subpoenas. (a) A subpoena 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 subpoena upon the person named therein shall be made by exhibiting the original subpoena to him, by reading the original subpoena to him if he is unable to read, by delivering the duplicate subpoena 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 subpoena 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 subpoena 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 subpoena by the person who attempted to make service.

(c) The original subpoena, 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 subpoena, to the official before whom the person named in the subpoena is required to appear.

§1.338 Subpoena forms. (a) Subpoena forms, marked "Original", "Duplicate", and "Triplicate", and bearing the Commission's seal, may be obtained from the Commission's Dockets Division. These forms are to be completed and submitted with any request for issuance of a subpoena.

(b) If the request for issuance of a subpoena is granted, the "Original" and "Duplicate" copies of the subpoena 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 subpoena 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 subpoena, to the official before whom the person named in the subpoena is required to appear.

(d) The "Duplicate" copy of the subpoena 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.

§1.339 Witness fees. Witnesses who are subpoenaed 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 subpoena, 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. Except as otherwise provided in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings. Such rules may be relaxed if the ends of justice will be better served by so doing.

§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 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 of entry.

1.361 Other proof of official record. Sections 1.359 and 1.360 do not prevent the proof of official records of or entry or lack of entry therein by any methods authorized by an 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 a hearing, and before he is excused, any party may move for the production of a statement of such witness, or part thereof, pertaining to his 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.

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.

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.

SUBPART C -- RULE MAKING PROCEEDINGS, PETITIONS AND RELATED PLEADINGS

1.401 Petitions for rule making. (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, FCC, Washington, D. C. 20554.

(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 amendments of the FM Table of Assignments (73.302 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 licensee or permittees. A draft Notice of Proposed Rule Making may be submitted with a petition for amendment of the FM or Television Table of Assignments.

(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.

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 given (by means of a Commission release entitled "Petition for Rule Making") as to the petition, file number, nature of the proposal and date of filing. Petitions are available for public inspection at the Commission's Docket Reference Room in Wash., D. C.

1.405 Response to petitions; replies. Except for petitions to amend the FM, TV or Air-Ground Table 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 petitions for rule making prior to the Commission action on the petition but not later than 15 days after filing of such statement. Such a reply shall be accompanied by proof of service upon the party(ies) filing the statement(s) 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.

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 rule making 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.

RULE MAKING PROCEEDINGS

1.411 Commencement of rule making proceedings. Rule making proceedings are commenced by the Commission, either on its own motion or on the basis of a petition for rule making. See 1.401 - 1.407.

1.412 Notice of proposed rule making. (a) Except as provided in paragraphs (b) and (c) of this section, prior notice of proposed rule making will be given.

(1) Notice is ordinarily given by publications 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 rule making 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 U.S., (2) Any matter pertaining 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 para (a) of this section, the Commission, before prescribing any requirements as to accounts, records, or memos to be kept by carriers, will notify the appropriate state agencies having jurisdiction over any carrier involved of the proposed requirements.

1.413 Content of notice. A notice of the proposed issuance, amendment, or repeal of a rule will including the following:

(a) A statement of the time, nature and place of any public rule making proceeding to be held.

1.413(b) - 1.417(b)

- (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 rule making is issued, the Commission will afford interested persons an opportunity to participate in the rule making 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 time provided will be specified in the notice of proposed rule making.

(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 rule making.

(d) No additional comments may be filed unless specifically requested or authorized by the Commission.

NOTE - In some (but not all) rule making 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 1.1201 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).

1.419 Form of comments and replies; number of copies. (a) Comments, replies, and other documents filed in a rule making proceeding shall conform to the requirements of 1.49.

(b) An original and 5 copies of all comments, briefs and other documents filed in a rulemaking proceeding shall be furnished the Commission. The distribution of such copies shall be as follows:

Dockets (original and 1) -----	2
Bureau -----	2
Secretary -----	1
Information office -----	1
	6
Total	6

Participants filing the required 6 copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. The distribution of such copies shall be as follows:

Commissioners -----	7
Dockets (original and 1) -----	2
Bureau -----	2
Information office -----	1
	12
Total	12

However, members of the general public who wish to express their interest by participating informally in a rulemaking proceeding may do so by submitting one copy of their comments, without regard to form, provided only that the Docket Number is specified in the heading. Also such informal participants

who wish responsible members of the staff to have a personal copy and to have an extra copy available for the Commissioners may file an additional 5 copies. The distribution of such copies shall be as follows:

Dockets (original and 1) -----	2
Bureau -----	2
Secretary -----	1
Information office -----	<u>1</u>
 Total	 6

(c) Any person desiring to file identical documents in more than one docketed rule making 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.

1.420 Additional procedures in proceedings for amendment of the FM or Television Table of Assignments. (a) Comments filed in proceedings for amendment of the FM Table of Assignments (73.202 of this chapter) or the Television Table of Assignments (73.606) or the Table of Assignments for Air-Ground stations in the Domestic Public Land Mobile Radio Service 22.521 which are initiated on a petition for rulemaking shall be served on petitioner by the person who files the comments.

(b) Reply comments filed in proceedings for amendment of FM, TV or Air-Ground Table of Assignments shall be served on the person(s) who filed the comments to which the reply is directed.

(c) Such comments shall be accompanied by 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 rule making, 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 operations on a different channel, and shall be accompanied by a certificate of service. The filing of a petition for reconsideration of an order modifying an authorization to specify operation on a different channel shall stay the effect of a change in the rules pending action on the petition.

(g) In response to a petition for rule making to amend Section 73.202(b), 73.504(a), or 73.606(b) filed by a licensee (or permittee) of an FM station to allot another class of FM channel to its community of license or by a licensee (or permittee) of a UHF television broadcast station to allot a VHF television channel to its community of license and upon a determination that the public interest would be served thereby, the Commission may modify the license (or permit) of the existing station where, in the course of the rule making proceeding, another party or parties has expressed an interest in the proposed channel and where there is not at least one additional equivalent or superior channel available for allotment.

1.421 Further notice of rule making. In any rule making proceeding where the Commission deems it warranted, a further notice of proposed rule making 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 rule making proceeding where the Commission determines that an oral argument, hearing or any other type of proceeding is warranted, notice of the time, and nature of such proceeding will be published in the FEDERAL REGISTER and will be mailed to all parties to the proceeding.

1.425 Commission action. The Commission will consider all relevant comments and material of record before taking final action in a rule making 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 paragraph (b) and (c) of this section.

(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 alteration.

1.429 Petition for reconsideration. (a) Any interested person may petition for reconsideration of a final action in a proceeding conducted under this subpart (see sections 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 rule making proceedings described in section 1.420 and is authorized to make editorial changes in the rules (see section 0.231(d)).

(b) A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;

(2) The facts 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 in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts 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) of these rules.

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.

(e) Except as provided in section 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.) 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 publication date of the notice.

(f) Oppositions to a petition for reconsideration shall be filed within 15 days after public notice of the petition's filing is published in the Federal Register and need be served only on the person who filed the petition. Oppositions shall not exceed 25 double-spaced typewritten pages.

(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.

(h) Petitions for reconsideration, oppositions and replies shall conform to the requirements of sections 1.49 and 1.52, except that they need not be verified. Except as provided in section 1.420(e), an original and 11 copies shall be submitted to the Secretary, Federal Communications Commission, Washington, D. C. 20554.

(i) The Commission may grant the petition for reconsideration in whole or in part or may deny the petition. Its order will contain a concise statement of the reasons for the action taken. Any order disposing of 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.

(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).

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.

Subpart D - Broadcast Applications and Proceedings

- 1.501 Deleted
- 1.502 Emergency Broadcast Authorizations. See 73.913
- 1.511 Applications required. See 73.3511
- 1.512 Where to file; number of copies. See 73.3512
- 1.513 Who may sign applications. See 73.3513
- 1.514 Content of applications. See 73.3514
- 1.516 Specifications of facilities. See 73.3516
- 1.517 Contingent applications. See 73.3517
- 1.518 Inconsistent or conflicting applications. See 73.3518
- 1.519 Repetitious applications. See 73.3519
- 1.520 Multiple applications. See 73.3520
- 1.522 Amendment of applications. See 73.3522
- 1.525 Agreements between parties for amendment or dismissal of, or failure to prosecute, broadcast applications. See 73.3525
- 1.526 Records to be maintained locally for public inspection by commercial applicants, permittees and licensees. See 73.3526
- 1.527 Records to be maintained locally for public inspection by non-commercial educational applicants, permittees and licensees. 73.3527
- 1.531 Formal and informal applications. See 73.3511
- 1.533 Application forms for authority to construct a new station or make changes in an existing station. See 73.3533
- 1.534 Application for extension of construction permit or for construction permit to replace expired construction permit. See 73.3534
- 1.536 Application for license to cover construction permit. See 73.3536
- 1.538 Application for modification of license. See 73.3538
- 1.539 Application for renewal of license. See 73.3539
- 1.540 Application for voluntary assignment or transfer of control. 73.3540
- 1.541 Application for involuntary assignment of license or transfer of control. See 73.3541
- 1.542 Application for temporary authorization. See 73.3542
- 1.543 Application for renewal or modification of special service authorization. See 73.3543
- 1.544 Application for broadcast station to conduct field strength measurements and for experimental operation. See 73.157 and 73.1510
- 1.545 Application for permit to deliver programs to foreign countries. 73.3545
- 1.546 Application to determine operating power by direct measurement of antenna power. See 73.45
- 1.547 Application for permission to use lesser grade operators. See 73.3547
- 1.548 Application to operate by remote control. See 73.3548
- 1.549 Requests for extension of authority to operate without required monitors, indicating instruments and EBS Attention Signal devices. See 73.3549
- 1.550 Requests for new or modified call assignments. See 73.3550
- 1.561 Staff consideration of applications which receive action by the Commission. See 73.3561
- 1.562 Staff consideration of applications which do not require action by the Commission. See 73.3562
- 1.564 Acceptance of applications. See 73.3564
- 1.566 Defective applications. See 73.3566
- 1.568 Dismissal of applications. See 73.3568
- 1.569 Applications for frequencies adjacent to Class 1-A channels. 73.3569

- 1.570 AM broadcast station applications involving other North American countries. See 73.3570
- 1.571 Processing AM broadcast station applications. See 73.3571
- 1.572 Processing TV broadcast and translator station applications. See 73.3572
- 1.573 Processing FM broadcast and translator station applications. 73.3573
- 1.574 Processing of international broadcast station applications. See 73.3574
- 1.578 Amendments to application for renewal, assignment or transfer of control. See 73.3578
- 1.580 Local public notice of filing of broadcast applications. See 73.3580
- 1.584 Petitions to deny. See 73.3584
- 1.587 Procedure for filing informal applications. See 73.3587
- 1.591 Grants without hearing. See 73.3591
- 1.592 Conditional grant. See 73.3592
- 1.593 Designation for hearing. See 73.3593
- 1.594 Local public notice of designation for hearing. See 73.3594
- 1.597 Procedures on transfer and assignment applications. See 73.3597
- 1.598 Period of construction. See 73.3598
- 1.599 Forfeiture of construction permit. See 73.3599
- 1.601 Simultaneous modification and renewal of license. See 73.3601
- 1.603 Special waiver procedure relative to applications. See 73.3603
- 1.605 Retention of applications in hearing status after designation for hearing. See 73.3605
- 1.611 Financial report. See 73.3611
- 1.612 Annual employment report. See 73.3612
- 1.613 Filing of contracts. See 73.3613
- 1.615 Ownership reports. See 73.3615

SUBPART F -- PRIVATE RADIO SERVICE
APPLICATIONS AND PROCEEDINGS

1.901 Scope. In the case of any conflict between the rules set forth in this subpart and the rules for specific services in Parts 80-99, the rules in this subpart shall govern.

GENERAL FILING REQUIREMENTS

§1.911 Applications required. (a) Except as provided in paragraph (b) of this section, station licenses as defined in section 3 (bb) of the Communications Act; operator licenses or modifications or renewals thereof; assignments of station licenses or any rights thereunder; and consent to transfer control of a corporation holding a license, shall be granted only upon written and signed application.

(b) In cases (1) of an emergency found by the Commission involving danger to life or property or due to damage to equipment, or (2) of 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 (3) of emergency where the Commission finds, in these services, that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission may grant station licenses, or modifications or renewals thereof, without the filing of a formal application; but no such authorization shall be granted for or continue in effect beyond the period of the emergency or war requiring it. The procedure to be followed for requests submitted under the provisions of this paragraph is the same as for obtaining special temporary authority under §1.925.

(c) In case of vessels at sea, the Commission may issue by cable, telegraph or radio a permit for the operation of a station until the vessel returns to a port of the continental United States.

(d) Canadian licensees desiring to operate in the United States under the terms of Articles 2 and 3 of the Convention between the United States and Canada concerning Operation of Certain Radio Equipment or Stations (which entered into force May 15, 1952) shall make applications upon FCC Form 410, which shall be filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554. Forms may be obtained from the FCC Secretary, any field office of the Commission or from the Controller of Telecommunications, Department of Transport, Ottawa, Canada.

(e) An alien amateur desiring to operate in the United States under provisions of sections 303(1)(2) and 310(a) of the Communications Act of 1934, as amended and under the terms of a bilateral agreement in force between the applicant's country and the United States concluded pursuant to the provisions of Pub.L.88-313, must make application on FCC Form 610-A, which must be filed with the office of the Federal Communications Commission, Gettysburg, PA 17325. Forms may be obtained

1/ Form filed as part of original document.

from the Secretary, any field office of the Commission and, in some instances, from United States missions abroad.

1.912 Where applications are to be filed. (a) Applications for any class of amateur operator license requiring examination under Part 97 of this Chapter shall be filed in the nearest FCC field office, listed in 0.121 of this Chapter.

(b) All applications for private land mobile licenses which require frequency coordination and all correspondence relating thereto shall be first sent to the certified frequency coordinator for the radio service or frequency group concerned. After the appropriate frequency coordination, such applications shall be forwarded by the coordinator to the Federal Communications Commission, Gettysburg, PA 17325.

(c) (Reserved)

(d) All formal applications for Class C, or D station licenses in the Citizens Radio Service, ship station license (FCC Forms 502 and 405-B), and aircraft station license (FCC Forms 404 and 405-B) shall be mailed to, or filed in person at the Commission's office at 334 York Street, Gettysburg, Pa. 17325. Any special requests or applications for special temporary authority concerning a Class C, or D station and all applications for Class A station licenses shall be filed in accordance with paragraph (e) of this section.

(e) All other applications shall be filed with the Commission's offices in Washington as follows:

(1) Applications submitted by mail shall be addressed to: Federal Communications Commission, Washington, D. C. 20554.

(2) Hand-carried applications accompanied by fees shall be delivered to: the secretary's office, 919 M Street, N.W., Washington, D.C.

1.913 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 shall be personally 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 and political subdivisions thereof, the District of Columbia, and units of local government, including incorporated municipalities, shall be signed by such duly elected or appointed officials as may be competent 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 applications 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 statement of act need not be

§1.913(d) - 1.918(c)

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.

§1.914 Full disclosure. Each application shall contain full and complete disclosures with regard to the real party or parties in interest and as to all matters and things required to be disclosed by the application forms.

§1.916 Repetitious applications. Where the Commission has, for any reason, denied an application for a new station or for any modification of services or facilities, dismissed such application with prejudice or revoked the license for a radio station in the radio service, the Commission will not consider a like or new application involving service of the same kind to substantially the same areas 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 the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

§1.918 Amendment of applications. (a) Any amendment to an application shall be signed and submitted in the same manner and with the same number of copies as was the original application.

(b) Any application may be amended as a matter of right prior to the grant of that application. However, an application which is substantially amended, as defined by 1.962(c), will be considered a newly filed application as of the date of the filing of the amendment.

(c) An application to amend the application after it has been designated for hearing shall be considered only upon written petition addressed to the hearing examiner and served upon the parties of record, and will be granted only for good cause shown. A petition which requests a substantial change or to change the applicant's position, or the issues, in a hearing, must be accompanied by a signed statement of a person with knowledge of the facts as to whether or not consideration has been promised to or received by the petitioner, directly or indirectly, in connection with the filing of

§1.918(c) - 1.921(c)

such petition for amendment. If consideration has been promised, or received, the statement shall set forth in full detail, all the relevant facts with sufficient itemization of the consideration to enable the examiner to determine to what extent, if any, that the consideration represents only the reasonable costs of prosecuting the petitioner's application.

(d) The Commission (or the presiding officer, if the application has been designated for hearing) may upon its own motion or upon motion of any party to a proceeding, order the applicant to amend his application so as to make the same more definite and certain and may require an applicant to submit such documents and may require an applicant to submit such documents and written statements of fact as in its judgment may be necessary.

(e) The Commission (or the presiding officer, if the application has been designated for hearing) may upon its own motion or upon motion of any party to a proceeding, order the applicant to amend the application so as to make the same more definite and certain and may require an applicant to submit such documents and written statements of fact as in its judgment may be necessary.

APPLICATION FORMS AND PARTICULAR FILING REQUIREMENTS

§1.921 Procedure for obtaining a radio station authorization and for commencement of operation. (a) Persons desiring to install and operate radio transmitting equipment should first submit an application for a radio station authorization in accordance with the rules for the particular service. A list of all application forms used by Safety and Special Radio Service Bureau is contained in §1.922. Each form contains appropriate instructions concerning the number of required copies, where it may be filed and the services in which it is intended to be used.

(b) Each application shall include all information called for by the particular form on which application is required to be filed unless the information called for is inapplicable, in which case that fact shall be indicated.

(c) In some cases equipment and service tests are required before an authorized station may be placed in regular operation. Reference should be made to the specific service regarding these provisions.

1.922 Forms to be used.

<u>FCC FORM</u>	<u>TITLE</u>
402-A	Annual Report of Licensees of Microwave and Other Fixed Stations When Such Facilities are Used Cooperatively With Other Persons.
402	Application for Microwave Station Authorization in the Safety and Special Radio Service.
402-10	Instructions for Completion of FCC Form 402.
402-R	Renewal Notice and Certification in the Private Operational-Fixed Microwave Radio Service.
404	Application for Aircraft Radio Station License.
405-A	Application of Renewal of Radio License (Short Form).
405-B	License Expiration Notice and/or Renewal Application.
406	Application for Ground Station Authorization in the Aviation Service
410	Registration of Canadian Radio Station Licensee and Application for Permit to Operate.
410-B	Application for Permit to Operate a Canadian General Radio Station in the United States.
425	RESERVED
453-B	Certificate of Special Temporary Authorization for Operation of Radio Station on Board New Aircraft.
480	Application for Civil Air Patrol Radio Station Authorization.
503	Application for Land Radio Station License in the Maritime Mobile Service.
506	Application for Ship Radio Station License.
506-A	Temporary Operating Authority, Ship Radio Station License and Restricted Radiotelephone Operator Permit.
525	Application for Disaster Communications Radio Station Construction Permit and License.
572	Temporary Permit to Operate a Business Radio Station.
574	Application for Radio Station Authorization in the Private Land Mobile and General Mobile Radio Service.
574-A	Supplementary Information for Trunked and Conventional Systems (806-821 MHz and 851-866 MHz bands).
574-B	Private Fixed Mobile and Radiolocation Service Form. Instructions of Completion of FCC Form 574.
610	Application for Amateur Radio Station and/or Operator-License.
610-A	Application of Alien Amateur Radio Licensee for Permit to Operate in the U.S.
610-B	Application for Amateur Club, Military Recreation or Radio Amateur Civil Emergency Service Station License.
660-B	Interim Amateur Permit.
702	Application for Consent to Assignment of Radio Station Construction Permit or License (For Stations in Services Other Than Broadcast).
703	Application for Consent to Transfer of Control of Corp. Holding Construction Permit of Station License (For Station in Services Other Than Broadcast).
714	Supplement to Appl. for New or Modified Radio Sta. Authorization (Concerning Antenna Structure Notification to FAA).
820	Application for Exemption From Ship Radio Station Requirements.
845	Amateur Code Credit Certificate.
1046	Assignment of authorization.

1.923 Waiver of Construction Permit Requirements. (a) A construction permit is not required for any station in the Private Radio Service. However, certain private radio facilities must be constructed within the periods specified in Part 90. See, however 1.1311(c).

(b) Licensees must apply for modification of sta. license for antenna change which would be inconsistent with terms of station authorization or for which notification is required to be given to the FAA by that agency. Part 17 of this chapter describes the notification criteria.

§1.924 Assignment or transfer of control, voluntary and involuntary. (a) (1) Radio licenses are not transferrable; however, except for those set forth in subparagraph (2) of this paragraph, they may be assigned. Licenses must be assigned whenever there is a change of ownership of an authorized radio station as, for example, if the radio communication equipment is sold with a business. The new owner must apply for assignment of the existing authorization in accordance with the rules under which the station is authorized.

(2) Licenses for stations in the Amateur, Aviation (aircraft), Personal and Maritime (ship) Radio Services cannot be assigned. Whenever there is a change of ownership of one of these latter stations, the new owner must apply for a new license. Upon receipt of the new license, the former license must be surrendered for cancellation.

(b) (1) Application for consent to voluntary assignment of a license, or for consent to voluntary transfer to control of a corporation holding a license, must be filed with the Commission at least 60 days prior to the contemplated effective date of assignment or transfer of control.

(2) The following application forms should be used:

(i) FCC Form 574; For assignment of station authorization in services under Part 90 of this chapter, except as provided in subparagraph (ii). Attached thereto shall be an executed Form 1046 or a signed letter from proposed assignor stating the desire to assign the current authorization in accordance with the rules governing the particular radio service involved. Application for consent to assign authorization of stations operating in the 806-821 and 851-966 MHz bands shall be accompanied by FCC Form 574-A. Applications for assignment of authorization for stations operating on frequencies below 27.5 MHz shall be accompanied by Form 574-B.

(ii) FCC Form 402: for assignment of an authorization for operational-fixed stations in the Private Radio Services using frequencies above 928 MHz (so called microwave stations). Attached thereto must be a signed letter from proposed assignor stating the assignor's desire to assign the current authorization in accordance with the rules governing the particular service involved.

(iii) FCC Form 406: for assignment of ground station authorizations in the Aviation Service, except as provided in subdivision (ii) of the subparagraph.

(iv) Reserved.

(v) Reserved.

(vi) FCC Form 703: For consent to transfer control of a corporation holding any type of license.

(vii) Reserved.

(c) (1) 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 in writing promptly of the occurrence of such death or legal disability.

(2) Within 30 days after the occurrence of such death or legal disability (except in the case of a ship or amateur station), 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 procedure and forms to be followed are the same as those specified in paragraph (b) of this section.

(3) In the case of stations in the Amateur Aviation (aircraft) Personal, and Maritime (ship) Radio Services, involuntary assignment of licenses will not be made; such licenses shall be surrendered for cancellation upon the death or legal disability of the licensee.

1.925 Application for special temporary authorization, temporary permit or temporary operating authority. (a) A licensee of or an applicant for a station in the Private Radio Services may file either a formal or informal application for a special temporary authority 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 §1.962(b)(5) and (f)). The nature of the extraordinary circumstance which, in the opinion of the applicant justifies insurance of a special temporary authorization, must be fully described in the request. Information presently on file with the Commission may be included by reference. Applications for special temporary authority must be filed at least 10 days prior to the date of the proposed operation. Applications filed less than 10 days prior to the proposed operation date will be accepted only upon a showing of a good cause. In situations involving the safety of life or property or where equipment has been damaged, a request for special temporary authority may be made by telephone provided a properly signed application is filed within 10 days of such a request.

(1) Formal application. Submit the appropriate FCC Form for the radio service in which the proposed operation is intended (see §1.922) with a covering letter that contains the justification for the special temporary authorization request.

(2) Informal application. Informal requests for special temporary authority must contain the following information:

- (i) Name, address and citizenship status of applicant;
- (ii) Statement of facts on which the request is based, including estimated duration of proposed use;
- (iii) Class of a station and nature of service;
- (iv) Location of station and the points with which the station will communicate including, when appropriate, geographical coordinates;
- (v) Equipment to be used, specifying manufacture and model number, frequencies desired, types of emissions, power and other pertinent technical information; and
- (vi) Description of proposed antenna structure, including height.
- (vii) For stations in the private operational-fixed microwave service, azimuth and beamwidth of the major lobe of the transmitting antenna and ERP.

(b) Reserved.

(c) The radio station on a new aircraft with factory installed radio equipment or on an aircraft which has recently undergone the initial installation of radio equipment may be operated for a period of 60 days under special temporary authority evidenced by a copy of a certificate (FCC Form 453-B) executed by the aircraft manufacturer, dealer or distributor, in the case of new aircraft with factory installed radio equipment; or the avionics manufacturer, dealer or distributor who installs the equipment. The original of the certificate must be mailed to the Commission with an application for a new station license on FCC Form 404.

(d) Deleted and reserved.

(e) Upon successful completion of a Commission supervised Amateur Radio Service operator examination, an applicant already licensed in the Amateur Radio Service may operate his amateur radio station pending issuance of his permanent amateur station and operator licenses by the Commission for a period of 90 days or until issuance of the permanent operator and station licenses, whichever comes first, under the authority of a properly executed Interim Amateur Permit (FCC Form 660-B). An Interim Amateur Permit conveys all operating privileges of the licensee's new operator license, but may be set aside by the Commission within the 90 day term if it appears that the permanent operator and station licenses cannot be granted routinely.

(f) An applicant for a Ship Radio station license may operate radio station pending issuance of his ship station authorization by the Commission for a period of days, under a temporary operating authority, evidenced by a properly executed certification made on FCC Form 506-A.

(g) An applicant for a Business radio station license utilizing an already authorized facility may operate the radio station for a period of 180 days, under a temporary permit, evidenced by a properly executed certification made on FCC Form 572, after the mailing of a formal application for station license together with evidence of frequency coordination, if required, to 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 6.1 meters above average terrain.

(h) An applicant for a Part 90 radio station license to use the facilities of a multiple licensed base station or Specialized Mobile Radio System may operate the radio station for a period of up to 180 days under a temporary permit evidenced by a properly executed certification of FCC Form 572 after mailing a formal application for station license to the Commission, provided that the antenna(s) employed by the control station(s) is twenty feet or less above ground or twenty feet or less above a man-made structure (other than an antenna tower) to which it is affixed. 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 6.1 meters above average terrain.

1.926 Application for renewal of license. (a) Application for renewal of station license shall be submitted on FCC Form 405-A (except as noted in paragraph (b) of this section.

(b)(1) Application for renewal of an amateur operator license, an amateur station or Radio Amateur Civil Service Station or a combined amateur operator/station license shall be filed on FCC Form 610.

(2) Reserved

(3) Applications for renewal of stations operating on frequencies below 27.5 MHz may be submitted of FCC Form 405-A, but it must be accompanied by a completed FCC Form 574-B unless Form 574-B had been submitted previously for the station in question.

(4) Applications for renewal of an amateur club or military recreation, or Radio Amateur Civil Emergency Service Station license shall be filed on FCC Form 610-B.

(5)(6)(7)(8) Reserved

(9) Applications for renewal of ship radio station licenses shall be submitted on FCC Form 405-B

(c) All applications for renewal of license must be made during the license term and should be filed within 90 days but not later than 30 days prior to the end of the license term. In any case in which the licensee has, in accordance with the provisions of this chapter, made timely and sufficient application for renewal of license, no license with reference to any activity for a continuing nature shall expire until such application shall have been finally determined.

§1.933 Installation or removal of apparatus. (a) In the Public Safety, Industrial, and Land Transportation Radio Services, replacement of transmitting equipment may be made without prior authorization: Provided, the replacement transmitter appears in the Commission's "Radio Equipment List, Part c" as designated for use in the Public Safety, Industrial, and Land Transportation Radio Services, and the substitute equipment employs the same type of emission and does not exceed the power limitations as set forth in the station authorization.

(b) In the personal Radio Services, replacement of transmitting equipment may be made without prior authorization if; (1) The replacement transmitter appears in the Commission's "Radio Equipment List", as designated for use in the Personal Radio Service, or (2) the replacement transmitter is for an R/C station, operates on frequencies assigned for R/C station use and complies with the technical standards of Part 95, Subpart E.

§1.934 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 examiner(s) with a properly completed FCC Form 610 prior to the examination. Upon completion of the examination, the examiner(s) will immediately grade the test papers. If the applicant is successful, the examiner(s) will forward the candidate's application to: (a) the Commission's Gettysburg, PA. facility for an application for a Novice Class operator license or (b) a Volunteer-Examiner Coordinator (VEC) for all other classes of operator licenses. The examiners will then issue a certificate for successful completion of an amateur radio operator examination. A VEC will forward the application to the Commission's Gettysburg, Pennsylvania facility.

APPLICATION PROCESSING PROCEDURES

§1.951 How applications are distributed. Licensing Division. All applications for radio stations are distributed as follows:

(a) Aviation and Marine Branch. (1) Aviation Radio Services applications; Air Carrier Aircraft, Private Aircraft, Airdrome Control, Aeronautical Enroute, Aeronautical Fixed, Operational Fixed (Aviation), Aeronautical Utility Mobile, Radionavigation (Aviation), Flight Test, Flying School, Aeronautical Public Service, Civil Air Patrol, Aeronautical Metropolitan, Aeronautical Search and Rescue Mobile and Aeronautical Multicom.

(2) Marine Radio Services applications: Public Coast Stations, Limited Coast Stations, Stations on Land in the Maritime Radio-determination Service, Fixed Stations associated with the Maritime Mobile Service, Stations operated in the Land Mobile Service for maritime purposes, Stations on Shipboard in the Maritime Services, and Public Fixed Stations in Alaska.

(b) Land Mobile Branch. (1) Industrial Radio Services applications: Business, Forest Products, Industrial Radiolocation, Manufactures, Motion Picture, Petroleum, Power, Relay Press, Special Industrial and Telephone Maintenance.

(2) Land Transportation Radio Services applications: Motor Carrier, Railroad, Taxicab and Automobile Emergency.

(3) Public Safety Radio Services applications: Fire, Forestry-Conservation, Highway Maintenance, Local Government and Police.

(4) Special Emergency Radio Services applications: Medical services, rescue organizations, physical handicapped, veterinarians, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities.

(c) General Radio Branch, Amateur, General Mobile, Disaster.

(d) Microwave Branch. Operational fixed point-to-point and point-to-multipoint applications.

§1.952 How file numbers are assigned. (a) File numbers are assigned to certain categories of applications by the Private Radio Bureau.

(b) File number symbols and service or class of station designators:

Amateur and Disaster Services

Y-Amateur
D-Disaster
R-Races

Aviation Services

A-Aeronautical and Fixed group
AA-Aviation auxiliary group
AR-Aviation radionavigation land
AC-Civil Air Patrol

Personal Radio Services

CA-General Mobile Radio Services

Industrial Services

IB-Business
IF-Forest products
IX-Manufactures
IM-Motion picture
IP-Petroleum
IY-Relay Press
IS-Telephone maintenance
IW-Power

Land Transportation Services

LA-Automobile emergency
LI-Interurban passenger
LJ-Interurban property
LR-Railroad
LX-Taxicab
LU-Urban passenger
LV-Urban property

Marine Services

MK-Alaskan group
M-Coastal group
MR-Marine radiodetermination land
MA-Marine auxiliary group

Microwave services

OF-Private Operational-Fixed Microwave

Public Safety Services

PF-Fire

PO-Forestry conservation

PH-Highway maintenance

PL-Local government

PP-Police

PS-Special emergency

Radiolocation Service

RS-Radiolocation

800MHz Services

GB-Conventional Business

GO-Conventional Industrial/Land Transportation

GP-Conventional Public Safety/Special Emergency

GX-Conventional Commercial (SMRS)

YB-Trunked Business

YO-Trunked Industrial/Land Transportation

YP-Trunked Public Safety/Special Emergency

YX-Trunked Commercial (SMRS)

900MHz Paging Services

GS-Private carrier paging systems

§1.953 How Applications are Processed. Applications are processed in sequence according to date of filing. Applications which are in accordance with the provisions of this chapter and established policies of the Commission may be processed to completion in accordance with the applicable delegations of authority as set forth in Part 0 of this chapter;

§1.955 Frequency coordination, Canada. (a) As a result of mutual agreements, the Commission has, since by 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:

1.955a - (e) Line B

MHz	MHz	GHz
30.56-32.00	150.80-174.00	10.55-10.68
33.00-34.00	450-470	10.70-13.25
35.00-36.00	806.00-960.00	
37.00-38.00	1850.0-2200.0	
39.00-40.00	2450.0-2690.0	
42.00-46.00	3700.0-4200.0	
47.00-49.60	5925.0-7125.0	
72.00-73.00		
75.40-76.00		

(b) The following frequencies are not involved in this arrangement because of the nature of the services:

MHz	MHz
156.3	156.95
156.35	157.0 & 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 railroad industry radio frequency allotments plan along the United States-Canada borders utilized by the FCC and the Dept. 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° N., 120° W., thence along parallel 48° N., to the intersection of 95° W., thence by great circle arc thru the southernmost point of Duluth, Minn., thence by great circle arc to 45° N., 85° W., thence southward along meridian 85° W., to its intersection with parallel 41° N., thence along parallel 41° N., 85° W., to its intersection with parallel 41° N., thence along parallel 41° N., to its intersection with meridian 82° W., thence by great circle arc through the southernmost point of Bangor, Maine, thence by great circle arc through the southernmost 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° N., 125° W., thence along parallel 50° N., to the intersection of

1.955(e) - (h)

90° W., thence by great Circle arc to the intersection of 45° N., 79° 30' W., thence by great circle arc through the northernmost point of Drummondville, Quebec (lat: 45° 52' N., long: 72° 30' W.), thence by great circle arc to 48°30' N., 70° 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° N., 144° W., thence by great circle arc to the intersection of 60° N., 143° W., thence by great circle arc so as to include all of the Alaskan Panhandle; -

Line D - Begins at the intersection of 70° N., 138° W., thence by great circle arc to the intersection of 61° 20' N., 139° W. (Burwash Landing), thence by great circle arc to the intersection of 60° 45' N., 135° W., thence by great circle arc to the intersection of 56° N., 128° W., thence south along 128° meridian to Lat. 55° N., thence by great circle arc to the intersection of 54° N., 130° 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° 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° 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 radiocommunications service 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 806-890MHz shall be in accordance with the Canada-United States agreement, dated April 7, 1982.

1.958 Defective applications. (a) Applications will be considered defective if:

- (1) The application is disqualified by statute.
 - (2) The proposed use or purpose of the station applied for would be unlawful.
 - (3) The frequency applied for is not allocated to the service proposed.
 - (4) The application form is not signed in accordance with Section 1.914 of these rules.
 - (5) The application is not complete with respect to answers, supplementary statements, execution or other matters of a formal character.
 - (6) The application is not in accordance with the Commission's rules or requirements and is not accompanied either by (i) a petition to amend any rule or regulation with which the application is in violation, or (ii) a request by the applicant for waiver of any rule or requirement with which the application is in violation. A request for rule amendment or waiver must show the nature of the amendment or waiver requested and set forth the reasons in support of it. Requests for waiver must state the nature of the waiver or exception desired and set forth reasons in support thereof including a showing that unique circumstances are involved and that there is no reasonable alternative solution within existing rules.
 - (7) The applicant is requested by the Commission to file any additional documents or information not included in the prescribed form and the applicant fails to comply with the Commission's request.
- (b) An application which is accepted for filing, but which is later determined to be defective, will be dismissed.

1.959 Resubmitted applications. Any application for frequencies below 470 MHz which has been returned to the applicant for correction will be processed in its original position in the processing line if it is resubmitted and received by the Commission's offices in Gettysburg, Pennsylvania, within 60 days from the date on which it was returned to the applicant. Otherwise it will be treated as a new application. An application for frequencies above 470 MHz which has been returned to the applicant will be processed in its original position in the processing line if it is resubmitted and received by the Commission's offices in Gettysburg, Pennsylvania within 30 days (45 days outside the continental United States) from the date on which it was returned to the applicant. Otherwise it will be treated as a new application.

§1.961 Dismissal of applications. (a) Any application may, upon written request signed by the applicant or his attorney, be dismissed without prejudice as a matter of right prior to the designation of such application for hearing.

(b) Failure to prosecute an application or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice where an application has not yet been designated for hearing; such dismissal may be with prejudice after an application has been designated for hearing.

(c) Requests to dismiss an application without prejudice after it has been designated for hearing will be considered only upon written petition properly served upon all parties of record and will be granted only for good cause shown. Such petition must be accompanied by a written and signed statement of a person with knowledge of the facts as to whether or not consideration has been promised

to or received by petitioner, directly or indirectly, in connection with the filing of such petition for dismissal of the application.

§ 1.962 Public notice of acceptance for filing, petitions to deny applications of specified categories. (a) Except as qualified in paragraph (b) of this section, the provisions of this section shall apply to all applications for authorizations, and substantial amendments thereof, for the following categories of stations and services.

(1) Fixed point-to-point stations using frequencies above 890 MHz (exclusive of control, relay, and repeater stations used as integral parts of mobile radio systems).

(2) Industrial radiopositioning stations for which frequencies are assigned on an exclusive basis.

(3) Aeronautical enroute stations.

(4) Aeronautical advisory stations.

(5) Airdrome control stations.

(6) Aeronautical fixed stations.

(7) Public coast stations, excluding those located in Alaska which will not render service for hire.

(b) The provisions of this section are not applicable to applications for the type of authorizations listed in this paragraph.

(1) A minor change in the facilities of an authorized station or a minor amendment of an application on file.

(2) Consent to an involuntary assignment or transfer under section 310(b) of the Communications Act or to a voluntary assignment or transfer thereunder which does not involve a substantial change in ownership or control.

(3) A license under section 319(c) of the Communications Act or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such licensee.

(4) Extension of time to complete construction of authorized facilities.

(5) A 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.

(6) An authorization under any of the proviso clauses of section 308(a) of the Communications Act.

(c) For the purposes of this section, a substantial amendment of an application on file and applications for a substantial change in the facilities of an authorized station shall be:

(1) Any addition or change in frequency (except deletion of a frequency);

(2) Any change in antenna azimuth;

(3) Any change in antenna beam width;

(4) Any change in antenna location greater than 5 seconds;

(5) Any change in antenna location of less than 5 seconds but also involving a requirement for special aeronautical study;

(6) Any change in emission;

(7) Any increase in antenna height;

(8) Any increase in authorized power in excess of a 2 to 1 ratio;

(9) Any increase in emission bandwidths.

(d) All amendments of an application on file and all changes requested in the facilities of an authorized station other than those amendments and modifications listed in paragraph (c) of this section shall be considered minor.

(e) The Commission will issue at regular intervals Public Notices listing all applications subject to this section which has been received by the Commission in a condition acceptable for filing, or have been returned to an applicant for correction, within the 30-day public notice period. They will relist any application which has been amended substantially since its previous listing, or which has been resubmitted to the Commission, after public notice of the return of the application to an applicant, pursuant to Section 1.959. Such acceptance for filing shall not preclude the subsequent dismissal of an application as defective.

(f) No application subject to the provisions of this section, as originally filed or substantially amended, will be granted by the Commission prior to the 31st day following the issuance of public notice of the acceptance for filing of such application or of any substantial amendment thereof; PROVIDED, HOWEVER, That the Commission, notwithstanding the requirements of this paragraph may, if the grant of such application is otherwise authorized by law: (1) Grant requests for special temporary authorization for periods not exceeding 180 days, accompanied by a statement of the reasons therefor, if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in institution of such operations would seriously prejudice the public interest, and (2) extend such temporary authorizations for additional periods not exceeding 180 days each, upon a finding of continued extraordinary circumstances requiring temporary operations in the public interest.

(g) Any party in interest may file with the Commission a petition to deny any application, whether as filed originally or as subsequently amended by a substantial amendment as defined in paragraph (c) of this section, subject to the provisions of this section, no later than 30 days after the date of the public notice listing the application, or substantial amendment to the application, as having been accepted for filing. A petitioner shall serve a copy of such petition on the applicant. A petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie 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.

(h) The applicant may file an opposition to any petition to deny and the petitioner may file a reply thereto (see 1.45) 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. The applicant shall serve a copy of his opposition on the petitioner, then the petitioner shall serve a copy of his reply on the applicant.

ACTION ON APPLICATIONS

§1.971 Grants without a hearing. (a) The Commission will grant without a hearing an application for a station authorization if it is proper upon its fact 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 not substantial and material questions of fact;
- (2) Applicant is legally, financially, and otherwise qualified;
- (3) A grant of the application would not involve modification, revocation, or non-renewal of any existing license;
- (4) A grant of the application would not preclude the grant of any mutually exclusive application; and
- (5) Grant would service the public interest, and necessity.

1.972 Grants by random selection. (a) The provisions this section, including provisions incorporated by reference, may apply to applications for initial licenses:

- (1) For stations in the following Private Radio Services:
Part 81-Stations on Land in the Maritime Services
Part 87-Aviation Services
Part 90-Private Land Mobile Services
Part 94-Private Operational-Fixed Microwave Service.

- (2) In any other proceedings in the Private Radio Services in which the Commission determines that there is no material difference in competing applicants' abilities to serve the public interest.

- (b) Applications in the services specified above shall be tendered, filed, accepted or dismissed, publicly noted, and subject to Petitions to Deny in accordance with 1.962 and the rules and policies established for each respective service.

- (c) If there are mutually exclusive applications for an initial license for stations subject to Part 81 or Part 87, or if there are more applications for initial license in Part 90 or Part 94 than can be accommodated on available frequencies, the Commission may process the applications pursuant to a system of random selection. Each such random selection shall be conducted pursuant to an order issued by the Private Radio Bureau and under the direction of the Chief of the Bureau.

- (d) Expedited hearing proceedings may be used to apply comparative criteria to determine which applications will be granted, denied or subjected to random selection. The selections percentages, preferences and probability calculations prescribed in 1.1621 et seq. of this part are not applicable to any system of random selection conducted in the Private Radio Bureau. Following the random selection, the Commission will announce the tentative selectee and determine whether the tentative selectee is qualified to receive the license under the rules applicable to the respective service. Where authorized under 1.962, Petitions to Deny which have been filed against the tentative selectee before the random selection will be reviewed and processed prior to grant, in accordance with 1.962 and rules applicable to each respective service. If the Commission determines that the tentative selectee has satisfied all requirements, it will grant the application. If it is determined that an initial tentative selectee is not qualified to receive the license grant, another tentative selectee chosen from among the same applicant pool during the same random selection will be designated until a qualified applicant is determined. If the commission determines that a substantial and material question of fact exists, it will designate the question for hearing. Hearings may be conducted by the Commission or the Chief of the Private Radio Bureau, or in the case of a question which requires oral testimony for its resolution, an Administrative Law Judge.

(b) If a petition to deny an application has been filed pursuant to § 1.962 and the Commission grants such application pursuant of paragraph (a) of this section, the Commission will deny the petition and issue a concise statement of the reason for such denial and disposing of all substantial issues raised by the petition.

§ 1.973 Designation for hearing. (a) If the Commission is unable to make the findings prescribed by § 1.971(a) with reference to an application filed prior to December 12, 1960 and not amended substantially on or after that date, the Commission by letter, will notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such findings and of all the objections made to such application. Following such notice, the applicant will be given an opportunity to reply. If the Commission after considering such reply is still unable to make the findings prescribed by § 1.971(a), it will formally designate the application for hearing on the grounds or reasons then obtaining and shall notify the applicant and all other known parties in interest of such action.

(b) If the Commission is unable to make the findings prescribed in § 1.971(a) with reference to any application filed on or after December 12, 1960, or any application filed prior to December 12, 1960, but amended substantially on or after that date, it will formally designate the application for hearing on the grounds or reasons then obtaining and will notify forthwith the applicant and all other known parties in interest of such action.

(c) Orders designating applications for hearing will specify with particularity the matters and things in issue and will not include issues or requirements phrased generally.

(d) 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.

(e) Any hearing subsequently held upon such applications shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. 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.

REPORTS TO BE FILED WITH THE COMMISSION

§ 1.981 Reports, annual and semiannual. (a) Licenses of stations authorized for developmental operation shall submit a report on the results of the developmental program. The report shall be filed with and made a part of each application for renewal of authorization.

(b) The report shall include comprehensive and detailed information on the following:

- (1) The final objective.
- (2) Results of operation to date.
- (3) Analysis of the results obtained.
- (4) Copies of any published reports.
- (5) Need for continuation of the program.
- (6) Number of hours of operation on each frequency.

(c) 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, D.C., no later than three months after the close of the licensee's fiscal year.

Subpart G - Schedule of Fees Filed with The Commission

General Information

§1.1101 Authority. Authority for this subpart is contained in Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), which provides that any service rendered by a Federal agency to or for any person shall be performed on a self-sustaining basis to the fullest extent possible. Title V further provides that the head of each Federal agency is authorized by regulation to prescribe such fees as he shall determine to be fair and equitable.

§1.1102 Payment of fees. (a) **Filing fees.** Each application or other filing filed on or after August 1, 1970, for which a fee is prescribed in this subpart, must be accompanied by a remittance in the full amount of the filing fee. In no case will an application or other filing be accepted for filing or processed prior to payment of the full amount specified. Filings for which no remittance is received or for which an insufficient amount is received, shall be returned to the applicant without processing. In the case of multiple applications for which a single check is drawn to cover all fees for the applications, there should be attached to the remittance an accounting sheet or notice stating what fees are covered by the check or money order.

(b) **Grant fees.** The applicant shall observe the instructions contained in the notice of grant concerning payment of the grant fees. Grant fees shall be accompanied by a transmittal advice identifying the purpose of the check. The duplicate copy of the Commission's notice of grant, which will specify the amount of the fee, shall suffice.

(c) All remittances should be accompanied by a letter application rate card, grant fee notice or other document to properly identify the purpose of the fee.

(d) Where a separate grant fee payment is prescribed in the various services, the fee will be payable within 45 days after grant by the Commission. In the broadcast services the grant fee in assignment and transfer cases must be transmitted by the new licensee immediately following consummation of the transfer or assignment. All grants, approvals, and authorizations issued by the Commission are made subject to payment and receipt of the applicable fee within the required period. Failure to make payment of the applicable fee to the Commission by the required date shall result in the grant, authorization or approval becoming null, void, and ineffective after that date.

NOTE: Applications for construction permit for new broadcast station or a major change in existing station that were on file prior to July 1, 1970, are exempt from the payment of grant fees specified in Section 1.1111(a)(1) of this chapter.

(e) **Broadcast Annual License Fee.** This must be submitted each year on or before anniversary date of expiration date of station's license. The licensee shall submit the amount of annual fee together with the station's rate card for the preceding June 1, on which the annual fee is based. (See 1.1111(a)(6). Such fee shall be for the 12 month period immediately preceding the anniversary date on which the fee is payable.

(1) A new station first becomes liable for the annual license fee at the time program test authority is granted. In the first year, the fee will cover the period from the date of grant of program test authority until the next payment (anniversary date). (Example: If a station is in operation for 7 full months prior to the next payment date, the annual license fee is 7/12ths of the annual rate.)

(2) Each broadcast station shall pay an annual license fee to the Commission for the period April 1, 1973-February 28, 1975. The fee applicable to the period after December 31, 1974 shall be the fee prescribed in 1.1111(a) (6) of this chapter. The fee applicable to the period April 1, 1973-December 31, 1974, is as follows:

(i) For AM and FM stations: The annual license fee will be a payment equal to 6.7 times the station's highest single "one-minute" spot announcement rate, but in no event shall the annual license fee for each AM and each FM station be less than \$25.00.

(ii) For television broadcast stations: The annual license fee will be a payment equal to 3.4 times the station's highest "30-second" spot announcement rate, but in no event shall the annual fee be less than \$100.00.

(3) Fees applicable to any twelve month period ending on or before February 1, 1975 must be submitted on or before August 1, 1975. Fees applicable to any 12 month period ending after February 1, 1975 must be submitted on or before the anniversary date of the expiration date of the station's license as provided above.

(4) For broadcast stations submitting a fee on August 1, 1975 applicable to the period April 1, 1973-April 1, 1974 or June 1, 1973-June 1, 1974, the rate card on which the fee will be based is that of June 1, 1973. For broadcast stations submitting a fee on August 1, 1975 applicable to the period August 1, 1973-August 1, 1974, October 1, 1973-October 1, 1974, December 1, 1973-December 1, 1974 or February 1, 1974-February 1, 1975, the rate card on which the fee will be based is that of June 1, 1974.

(5) For broadcast stations paying an annual license fee applicable in part to a portion of calendar year 1974 and in part to a portion of calendar year 1975, the broadcast annual license fee will be prorated between the annual fee prescribed in paragraph (e) (2) of this section and the annual fee prescribed in 1.1111(a) (6) of this chapter. A station's annual license fee will be computed by taking the number of months from the anniversary date to December 31, 1974, divided by 12, times the full year annual fee which is required by paragraph (e) (2) of this section, and adding to that the fee computed by taking the number of months from January 1, 1975 to the anniversary date, divided by 12 times the full year annual fee which is required by 1.1111(a) (6) of this chapter.

NOTE 1: Example: AM station X has a license expiration date on October 1, Station X's highest single "one-minute" spot announcement rate is \$10 as of June 1, 1974 and \$20 as of June 1, 1975. Station X is required to pay an annual fee for the period October 1, 1973-October 1, 1974 on August 1, 1975 and an annual fee for the period October 1, 1974-October 1, 1975 on October 1, 1975. The fee due on August 1, 1975 will be \$67.00. This is calculated by multiplying 6.7, the fee multiplier specified in paragraph (e) (2) of 1.1102 times \$10.00 the highest single "one minute" spot announcement rate as it appears on the applicable rate card, that of June 1, 1974. The fee due on October 1, 1975 is \$161.00. To calculate this fee it is necessary to prorate the fee based on the portion of the 12-month fee payment period during calendar year 1974 and that during Calendar year 1975. The number of months from October 1, 1974 to

1.1102(5) Note - (f) (2)

December 31, 1974 is 3. The first step in calculating the fee is to multiply $3/12$ by $6.7 \times \$20$, the portion of calendar year 1974 covered by the fee ($3/12$) times the applicable fee multiplier, (6.7), times the spot rate (\$20 here as the June 1, 1975 rate card is used). This portion of the fee is \$33.50. Next, it is necessary to multiply $9/12 \times 8.5 \times \$20$, the portion of calendar year 1975 covered by the fee ($9/12$) times the fee multiplier from 1.1111(a) (6). (8.5), times the spot rate. This portion of the fee is \$127.50. The annual fee equals the sum of the two amounts \$33.50 and \$127.50 or \$161.00

(f) Cable Television Annual Authorization Fee. The annual fee prescribed in 1.1116(b) of this chapter for cable television systems must be submitted by April 1 of each year for the preceding calendar year. The fee will be based on the average number of subscribers as set in 1.1116(b).

(1) A new cable television system becomes liable for the annual authorization fee as of the date it begins to charge for service to 50 subscribers or more. In the first year of operation of the system, the fee will be computed based on the average of the number of subscribers being served on the last day of each calendar quarter of operation up to the end of the calendar year. (Example: If a cable system is in operation on the last day of three quarters prior to the end of the calendar year, the average of those three last-day figures is to be used in computing the fee required). The fee will cover the number of full months of operation until the end of the calendar year. (Example: If a cable system is in operation for seven full months prior to the end of the calendar year, the fee is seven-twelfths of the annual rate).

(2) Each CATV system shall pay an annual authorization fee to the Commission for calendar years 1973 and 1974 to be submitted on or before August 1, 1975. The fee for each system shall be equal to the number of subscribers times 6 cents. The number of subscribers shall be determined by averaging the number of subscribers on the last day of each calendar quarter.

(g) Applications and attached fees should be addressed to Federal Communications Commission, Washington, D.C. 20554, or to the appropriate FCC field office and should not be marked for the attention of any individual bureau or office. Fee payments should be in the forms of a check or money order payable to the FCC. The Commission will not be responsible for each sent through the mails. All fees collected will be paid into the U.S. Treasury as miscellaneous receipts in accordance with the provisions of Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)).

(h) Receipts will be furnished upon request in the case of payments made in person, but no receipts will be issued for payments sent through the mails.

(i) Except as provided in 1.1103 and 1.1104, all application filing fees will be charged irrespective of the Commission's disposition of the application. Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in a major change in the application; the resubmission will then be treated as a new application requiring a new filing fee.

1.1103 Return or refund of fees. (a) The full amount of any fee submitted will be returned or refunded, as appropriate, in the following:

- (1) Where no fee is required for the application filed.
- (2) Where the application is filed by an applicant who cannot fulfill a prescribed age requirement.
- (3) Upon return of an application for renewal of an operator license which is received after expiration of the grace period.
- (4) Where the applicant is precluded from obtaining a license by the provisions of section 303(1) or 310(a) of the Communications Act.
- (5) Where circumstances beyond the control of the applicant, arising after the application is filed, would render a grant useless.
- (6) When applications (accompanied by fees) are filed where not actually required by Safety and Special Radio Services rules (e.g., change of address, pro forma change or corporate name, etc.).
- (7) When construction permit holders and licenses make nonsubstantive corrections in license grants within a period of 90 days from grant.

(b) Lifted.

1.1104 General exceptions. (a) No fee is required for an application filed for the sole purpose of amending an authorization or pending application (if a fee is otherwise required) so as to comply with new or additional requirements of the Commission's rules or the rules of another Federal government agency affecting the authorization or pending application; however, if the application also requests an additional modification or the renewal of his authorization, the appropriate modification or renewal fee must accompany the application. Fee exemptions arising out of this general exception will be announced to the public in the orders amending the rules or in other appropriate commission notices.

(b) No fee is required for an application filed by an alien pursuant to a reciprocal radio licensing agreement.

(c) A receiver model certificated prior to 8/1/70, and which will continue to be distributed after 8/1/70, need not be recertificated and no filing or grant fee shall be required for continued distribution provided it will continue to be distributed under the same trade name and model number and with identical circuitry.

1.1105 General rule (STA and waiver). Except as otherwise provided no filing fee is required for any application or request for special temporary authority (STA) or waiver of brief duration or minor character in any service or for the grant of either an STA or a waiver of brief duration or minor character. Upon the grant of an application or request for either an STA or a waiver of an important character, the applicant will be notified to remit a fee in the following amount for the respective services: Broadcast Services - \$25; Common carrier services - \$25; Safety and Special Radio - \$5; Cable Television Services - \$25.

1.1111 Schedule of Fees for Radio Broadcast Services. (a) Except as provided in paragraph (b) of this section, the fees prescribed below are applicable to applications and operations in the Radio Broadcast Services:

(1) Construction Permits. Application for construction permit for new station or for major changes in existing stations:

	<u>Filing Fee</u>	<u>Grant Fee</u>
VHF - Top 50 Markets ¹ -----	\$10,000	\$ 67,500
UHF - Top 50 Markets -----	2,500	22,500
VHF - Next 50 Markets -----	4,000	27,000
UHF - Next 50 Markets -----	1,000	9,000
VHF - Balance -----	2,000	13,500
UHF - Balance -----	500	4,500
FM - Class A -----	200	1,350
FM - Class B and C -----	400	2,700
AM - Day - 50 kW -----	1,000	6,750
AM - Day - 25 kW -----	800	5,400
AM - Day - 10 kW -----	600	4,050
AM - Day - 5 kW -----	400	2,700
AM - Day - 2.5 kW -----	300	2,025
AM - Day - 1 kW -----	200	1,350
AM - Day - 500 W -----	100	675
AM - Day - 250 W -----	50	340
AM - Unlimited 50 kW -----	2,000	13,500
AM - Unlimited 25 kW -----	1,600	10,800
AM - Unlimited 10 kW -----	1,200	8,100
AM - Unlimited 5 W -----	800	5,400
AM - Unlimited 1 W -----	400	2,700
AM - Unlimited 500 W -----	200	1,350
AM - Unlimited 250 W -----	100	675
AM - Class IV full time, 1kWday, 250 W nite	200	1,350

¹The market size shall be determined by the ranking off the American Research Bureau, on the basis of prime time households (average quarter-hour audience during prime time, all home stations).

(2) Other applications: The following fees shall accompany each application:

	<u>AM</u>	<u>FM</u>	<u>TV</u>	<u>Auxiliary</u> ¹
Application for construction permit to replace expired permit (FCC Form 321) ²	\$250	\$250	\$250	\$50
Application for modification other than major change, FCC Form 301	(3)	(3)	(3)	(3)

	<u>AM</u>	<u>FM</u>	<u>TV</u>	<u>Auxiliary</u> ¹
(a) Application to change antenna/transmitter site; or to increase antenna height, or to change antenna pattern				
(b) All other FCC Form 301 applications	\$100	\$100	\$100	\$ ----
Application for change of call sign for broadcast station	200	200	200	----
Application for authorization in Auxiliary Broadcast Services, FCC Form 313:				
(a) Application for modification of construction permit or license in Auxiliary Broadcast Services				50
(b) Application for construction permit for remote pickup mobile station				100
(c) Application for new station construction permit for inter-city relay, or for studio transmitter link, or for remote pickup base station				250
Application for construction permit or license of auxiliary or alternate main transmitter	50	50	50	50
Application for extension of FCC 701	100	100	100	100
All other applications in the broadcast services	100	100	100	100

¹With respect to applications for remote pickup broadcast stations authorized under Subpart D of Part 74 of this chapter, one fee will cover the base station (if any) and all the remote pickup mobile stations of a main station, provided the applications therefore are filed at the same time.

²The \$250 fee applies to construction permits for new stations or major changes in existing stations. An application to replace a construction permit for a modification other than a major change must be accompanied by a fee of \$100 in all services except auxiliary broadcast.

³One-half of filing fee for an application for construction permit for new station or major change in existing station, but not less than \$100.

(3) Subscription Television. Application for Subscription Television authorizations:

Application Filing Fee ----- \$700

(4) International Broadcasting: Construction Permits for new stations and major changes in existing stations:

Filing Fee ----- \$70
 Grant Fee ----- 630

Grant fee for application for seasonal schedule:

Per transmitter-hour authoriz-
 ed (for one day) ----- 17

(5) Assignments and transfers: Applications for assignment of license or transfer of control-Form 314, Form 315 and 316 applications. (Where more than one broadcast station license is involved, the total amount of fees prescribed for each license so involved will be paid in the manner set forth below):

<u>Sales or Exchanges</u>	<u>Fee</u>
Application filing see (forms 315 and 315) -----	\$200
Application filing fee (form 316) -	100
Grant fee on forms 314/315 (to be paid immediately following consummation of the assignment or transfer):	
For AM stations, and joint assignment or transfer of AM-FM stations, with gross revenue of \$400,000 or less ---	0.9% of gross revenue.
For AM stations, and joint assignment or transfer of AM-FM stations, with gross revenues greater than \$400,000 -----	\$3,600 plus 1.4% of gross revenue in excess of \$400,000
For All FM stations -----	0.9% of gross revenue.
For TV stations with gross revenue of \$800,000 or less ----	1% of gross revenue.
For TV stations with gross revenue greater than \$800,000 --	\$8,000 plus 1.6% of gross revenue in excess of \$800,000.
In all other cases and/or when gross revenue is indeterminable (See Note 2) -----	0.4% of consideration for assignment or transfer.

Gifts: Application filing fees and grant fees for assignments or transfers resulting from gifts are the same as those for sales or exchanges above, with the exception that no grant fee will be assessed for an assignment or transfer by gift from a person to a spouse and/or lineal descendent.

Note 1: Gross revenue will be determined by taking the average of the annual gross revenue figures appearing on line 19 of FCC Form 324 for the respective station(s) for the three years immediately preceding the date of filing the application for the assignment or transfer. Procedures will be initiated to obtain the gross revenue figure for the immediately preceding year in any case in which a grant may be approved prior to the filing of the Form 324.

NOTE 2: In certain FCC Form 314 and 316 situations, gross revenue figures are not available for assessment of a fee on that basis--for example, assignment or transfer of either an AM or FM from what had been a joint AM-FM operation (i.e., one station is assigned or transferred, and the other retained) or both the AM and the FM stations are assigned or transferred to different parties, and separate FCC Form 324 reports have not been filed for the proceeding three years prior to the year in which the application is filed; assignment or transfer of a broadcast station license in which gross revenue has been either nonexistent or so intermittent as to be an improper basis upon which to establish a grant fee; assignment or transfer of religious or other stations that do not report gross revenue. In those types of cases, the grant fee will be assessed on the basis of consideration as indicated above.

NOTE 3: In the case of transfer of control, the grant fee will be based on the percentage of interest acquired which resulted in the transfer of control (except for those situations described in Note 4 above in which additional acquisitions of interest may be subject to the grant fee). Example: "A" acquires a 60% interest in an AM station with gross revenue of \$100,000. Assuming "A" holds no other interest in this station that was acquired in the preceding two years, the grant fee is \$540-- $\$100,000 \times 0.9\% \times 60\%$).

Note 4: In the case of transfer of control in which the transferee holds previously acquired interest in the subject broadcast station license, the grant fee will be based on the acquisition which resulted in transfer of control and interests acquired during the two-year period immediately preceding the date of the contract for the transfer of control. In addition, a grant fee will also be assessed against any additional interest in the station acquired within two years following the date of the contract for transfer of control. Such grant fee for additional acquisitions within two years subsequent to transfer of control will be computed on the basis of the same gross revenue figures used in connection with the transfer of control application and such additional fee shall be submitted at the time the experimental Ownership Report (FCC Form 323) is filed with the Commission pursuant to 1.615(c) of this chapter. (Example: "A" acquires the following interests in an AM station with \$100,000 gross revenue: 1/1/71 - 10%, 1/1/72 - 10%, 1/1/73 - 20%, 2/1/74 (contract date) - 30%. The transfer grant fee is \$450-- $\$100,000 \times 0.9\% \times 50\%$ with the 50% figure representing the interest that resulted in transfer of control plus interest acquired in the two years immediately preceding the date of contract for the transaction which resulted in transfer of control. If "A" were to acquire any additional interest in this station prior to 2/1/76, an additional grant fee would be incurred equivalent to the additional interest acquired times \$100,000 times 0.9%.

NOTE 5: Grant fees are required in the case of FCC Form 316 applications only in cases in which the application is filed pursuant to 1.540 (b)(3) or (b)(6) of this chapter. In such cases, grant fees will be computed in the same manner as for FCC Form 315 applications.

(6) Annual License Fee. Each broadcast station shall pay an annual license fee to the Commission based on the station's rate cards as of June 1 of each year. See 1.1102(e) for explanation of manner of payment and computation of the broadcast annual license fee.

For AM and FM stations (Radio): The annual license fee will be a payment equal to 8.5 times the station's highest single "one minute" spot announcement rate, but in no event shall the annual license fee for each AM and each FM station be less than \$25.00.

For TV broadcast stations: The annual license fee will be a payment equal to 4.25 times the station's highest "30-second" spot announcement rate, but in no event shall the annual license fee be less than \$100.

(b) Fees are not required in the following instances:

(1) Applications filed by tax exempt organizations for operation of stations providing noncommercial educational broadcast services, whether or not such stations operate on frequencies allocated for non-commercial, educational use.

(2) Applications in the standard broadcast service requesting authority to determine power of non-directional standard broadcast stations by direct measurement.

(3) Applications for all FM or TV translators and all FM or TV translator relay stations.

(4) Applications by local government entities in connection with the licensing or operation of a noncommercial broadcast station.

(5) Applications for licenses to cover construction permits in the auxiliary broadcast services.

1.1113 Schedule of fees for Common Carrier Services. Applications filed for common carrier services shall be accompanied by the fees prescribed below:

(a) Domestic Public Land Mobile Radio Services¹

Application Fee

Application for initial construction permit or for relocation of a base station including authority for mobile units, blanket dispatch station authority, ² and standby transmitters without independent radiating systems ^{3 4} -----	\$150
If above includes authority for mobile units, blanket dispatch station authority or standby transmitters without independent radiating system add per mobile unit, dispatch station or standby transmitter -----	6
Application for initial construction permit or for relocation of a dispatch station, ⁵ auxiliary test station, control station or repeater station ⁴ -----	75
Application for other than initial construction permit, modification of construction permit, or license for base station, dispatch station, auxiliary test station, control station, or repeater station at an existing station location--	30
Application for modification of authorization to increase number of mobile units, blanket dispatch stations or standby transmitters, without independent radiating systems--per unit or transmitter --	6
Application for renewal of base station license -----	90
If above includes renewal authority for mobile units, blanket dispatch stations or standby transmitters without independent radiating systems, add per mobile unit, dispatch station or standby transmitter -----	3
Application for renewal of license for dispatch station, auxiliary test station, control station or repeater station -----	35

Application Fee

Application for license, modification of license
or renewal of license for individual mobile
stations:⁶

One mobile unit per application -----	\$ 15
Each additional mobile unit per application---	9

(See Footnotes at end of tables.)

(b) Rural Radio Service

Application for an initial construction permit or
for relocation of central office, interoffice
or relay facilities⁴ ----- 120

Application for other than initial construction
permit, modification of construction permit
or license for central office, interoffice or
relay facilities⁴ ----- 45

Application for an initial construction permit or
for relocation of rural subscriber facilities⁴-- 75

Application for other than initial construction
permit modification of construction or license
for rural subscriber facilities ----- 45

Application for license for operation of stations
at temporary-fixed locations ----- 20

Application for renewal of license of central office,
interoffice or relay station ----- 75

Application for renewal of license of rural sub-
scriber station ----- 15

(c) Point-to-Point Microwave Radio Services

Applications for construction permit or for modifica-
tion of construction permit to add or change
point(s) of communication or to increase service
to existing points of communication or for re-
location of facilities^{4 7} ----- 120

Application for license for operation of a station
at temporary-fixed location ----- 90

Application for other modifications of construction
permit or modification of license.⁴----- 30

Application of renewal of license ----- 75

(See Footnotes at end of tables)

(d) Local Television Transmission Service

Application for construction permit or for modifica-
tion of construction permit to add or change
point(s) of communications or to increase ser-
vice to an existing station location or for re-
location of facilities⁴ ----- 120

Application Fee

Application for license for operation of an STL station at temporary fixed locations -----	\$ 90
Applications for license for operation of a mobile television pickup station -----	90
Application for other modification of construction permit or modification of license ⁴ -----	30
Application for renewal of license -----	75
(See Footnotes at end of tables)	

(e) Multipoint Distribution Service

Application for initial construction permit or for modification involving relocation of station or addition or change of frequencies or increase in power -----15	150
Application for other modification of construction permit or license -----	30
Application for renewal of license -----	75

(f) International Fixed Public Radio-Communication ServicesInternational Fixed Public Station:

Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station. ⁴ -----	500
Application for construction permit for a replacement transmitter(s) at an authorized station (no fee will be charged for application for modification of license to delete transmitter(s) being replaced if the applications are filed simultaneously) ⁴ -----	105
Application for change of location of an authorized station -----	330
Application for modification of license -----	75
Application for renewal of license -----	180

International Control Station:

Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station. ⁴ -----	300
Application for construction permit for a replacement transmitter(s) at an authorized station (no fee will be charged for application for modification of license to delete transmitter being replaced if the applications are filed simultaneously) ⁴ -----	180
Application for change of location of an authorized station -----	300
Application for modification of license -----	75
Application for renewal of license -----	90
(See Footnotes at end of tables)	

(g) Other Radio Applications

Offshore Radio Communications Service:Application Fee

Application for an initial construction permit or for relocation of Offshore Central or Relay Facilities.4	\$120
Application for other than initial construction permit and for midification of construction permit or license for Offshore Central or Relay Facilities. 4 -----	45
Application for initial construction permit or for re-location of fixrd subscriber facilities. 4 -----	75
Application for other than initial construction permit and for modification of construction permit or license for fixed subscriber facilities. -----	30
Application for license for operation of stations at temporary fixed locations. -----	90
Application for renewal of license of Offshore or Relay facilities. -----	75
Application for renewal of license of fixed subscriber station. -----	15
Application for license, modification of license or renewal of license for individually licensed mobile stations:	
One unit per application. -----	15
Each additional mobile unit per application. -----	9

Application Fee(g) Other Radio Applications

Application for assignment of an authorization or transfer of control (a separate fee is required for each call sign covered by the application)-----	\$	35
All other common carrier radio applications -----		15

(h) Satellite Communications Services ³

	<u>Filing Fee</u>	<u>Grant Fee</u>
Application for initial construction permit for commercial transmit/receive earth station ⁴ -----	\$120	1/3 of 1% of construction cost as set forth in the application, not to exceed \$15,000.
Application for initial construction permit for a commercial receive-only or transportable earth station ⁴ -----	60	Do
Application for modification of construction permit or license or for construction permit for additional equipment at an existing commercial earth station ⁴ -----	60	1/3 of 1 percent of construction cost as set forth in the application
Application for authority to operate a transportable earth station at a fixed site---	180	None
Application for renewal of license for a commercial transmit/receive earth station -----	60	\$3,000.
Application for renewal of license for a commercial receive-only earth station -----	330	None.
Application for initial construction permit or modification of construction permit or license for an auxiliary station (boresight) to an earth station or for a telemetry, tracking and control station ⁴ -----	30	1/3 of 1 percent of construction cost as set forth in the application
Application for initial construction permit per satellite ⁴ -----	150	\$3,000
Application for authority to launch and operate satellites, per satellite -----	150	1/3 of 1 percent of satellite construction cost as set forth in the application (due 45 days after successful launch and operation)
Application for renewal of an auxiliary station to an earth station or for a telemetry, tracking and control station -----	180	None.
Application for assignment of a commercial transmit-receive earth station or satellite construction permit or license or transfer of control of a licensee or permittee, per earth station or satellite -	45	None.

	<u>Filing Fee</u>	<u>Grant Fee</u>
Application for assignment of a commercial receive-only or transportable earth station construction permit or license or transfer of control of a licensee or permittee, per earth station -----	\$ 45	None
Application for communications common carrier for authorization to own stock in the Communications Satellite Corp.-----	45	None.
Any other application filed under the Communications Satellite Act or the Communications Act of 1934 in the Satellite Communications Services ----	45	None
 (i) <u>Common Carrier Nonradio Applications:</u>		
Section 214 application for construction or acquisition of landline domestic cable or waveguide ¹⁰ -----	60	\$3 per route mile.
Section 214 application to establish or supplement domestic facilities by installation or acquisition of carrier equipment on wire, cable, waveguide or radio routes ¹⁰ -----	15	\$4.50 per 100 equivalent 4 kHz channel miles ¹¹ 12 authorized
Section 214 application to lease channels from other carriers for domestic use ¹⁰ -----	15	\$3.50 per 100 equivalent 4 kHz channel miles ¹¹ 12 authorized
Section 214 application to lease satellite transponder for domestic use (per transponder). -----	25	None.
Section 214 application for overseas cable construction -----	600	\$30 per route mile (nautical)
Section 214 application to establish or supplement international facilities by installation or acquisition of carrier equipment on overseas cable or radio routes (except satellite) or to acquire such facilities on a capital basis other than ownership --	30	\$6 per 100 3 kHz channel miles authorized. ¹¹
Section 214 application to lease channels on overseas cable or radio routes (except satellites). -----	30	\$3.50 per 100 equivalent 3 kHz channel miles authorized. ¹¹

1.1113 (h) - Notes

	<u>Filing Fee</u>	<u>Grant Fee</u>
Section 214 application to lease circuits to interconnect international circuits:		
Circuits outside of the U.S. -----	\$ 15	None
Circuits within the U.S. or territories -----	15	\$3.50 per 100 equivalent 3 kHz channels miles authorized ⁹ ₁₁
Section 214 application to install carrier equipment to establish international channels of communication at an earth station -----	60	1/3 of 1 percent of equipment and installation cost as set forth in the application
Section 214 application to establish and provide international channels of communication via satellite -----	150	None
Section 214 application to acquire satellite channels for international use -----	30	\$12 per equivalent 4 kHz channel. ¹¹
Cable Landing License -----	120	None.
Section 214 application to discontinue, reduce or impair service to the public:		
Telegraph offices and Public Coast Stations -----	15	Do
All Other -----	60	Do
Interlocking Directorate applications ----	30	Do
Section 221 applications -----	30	Do
Application for certification for priority of leased intercity private line service in emergency situations -----	45	Do
All other common carrier nonradio -----	15	Do
Tariff Filings:		
Each tariff page, original or revised, filed pursuant to Part 61 of the Commission's Rules		
Annual Gross Revenue ¹⁴ of Issuing Carrier:		
Under \$1 million -----		50
\$1 million to \$100 million -----		100
\$100 million to 1 Billion -----		300
\$1 Billion to 10 billion -----		500
Over \$10 billion -----		700

¹In this service each transmitter at a fixed location is a separate station notwithstanding the inclusion of more than one such station on a single call sign.

²When included as part of base station applications, a request for blanket dispatch station authority made pursuant to the provisions of 21.519(a) of this chapter does not require an individual application. A request for such dispatch station authority filed separately from a base station construction permit application requires an application for modification of license and an appropriate fee.

- 3-An application for a standby transmitter having its own independent radiating system requires the same fee as a base station application.
- 4-No additional fee will be charged for a single application for a license to cover a construction permit unless there is a modification or variation of outstanding authority involved. In that event the appropriate fee for modification is applicable.
- 5-This fee applies to any request for dispatch station authority not made pursuant to 21.519(a) of this chapter.

⁶This fee is not required for applications filed by governmental entities.

⁷For applicants who propose to multiplex their radio systems and who make the supplementary showing required by sections 21.607 and 706 of this chapter in the lead application in lieu of filing a separate application under section 214 of the Act, an additional grant fee will be payable at the rate prescribed in the schedule for section 214 applications to extend or supplement facilities.

⁸The filing fees specified in the schedule for satellite communications services do not apply to initial applications for domestic systems considered in conjunction with that of Western Union; Public Notice FCC 70-953. However, the grant fee will be applicable to any grant. All subsequent applications will be subject to the filing as well as the grant fee.

⁹In the case of connecting circuits for international satellite circuits the mileage is computed as the distance from the U.S. terminal to the nearest earth station.

¹⁰Projects undertaken pursuant to grant of continuing authority as prescribed in 63.03(c) and 63.04(c) of this chapter are subject to the grant fee.

¹¹Fees for other than 4 kHz or 3 kHz channels will be appropriate multiple or fractions of the 4kHz or 3 kHz channel fee. (No grant fee is required for a video and associated audio channels.) Where the transmission of voice or digital data will be accomplished in the digital modes, a 64 kb/s transmission channel is to be considered the equivalent of one 4 kHz analog channel for purposes of calculating the grant fee.

¹²Unless otherwise specified, the grant fees based on channel miles for Section 214 applications are calculated on the basis of airline mileage between terminal cities (up to a maximum of 2500 miles between cities). Where domestic satellite channels are to be established between several cities on a demand basis (as opposed to a point-to-point basis), the grant fee is calculated on the basis of the arithmetic average of the distances between each of the cities being so interconnected. Where the channels being established are one-way (rather than two-way), one-half the normal grant fee will apply.

¹³For blanket applications filed pursuant to 63.67 or 63.68 of this chapter, the grant fee shall apply to each individual main or branch office for which reduction of hours is authorized.

¹⁴Total operating revenues of filing carrier and its communications common carrier subsidiaries for the previous calendar year. The fees for tariff filings made by one carrier solely on behalf of another carrier shall be based on the total operating revenues of the carrier for which the filing is made.

¹⁵An additional grant fee of \$50 is applied for any application proposing transmitter power in excess of 10 watts.

1.1115 Schedule of fees for the Safety and Special Radio Services. (a) Except as provided in paragraph (c) of this section, the fees set forth in the schedule below shall accompany all formal applications for authorizations filed in the Safety and Special Radio Services:

	<u>Fee</u>
Applications for all authorizations except as noted below ----	\$ 4
Ship License that includes interim authorization -----	10
Operational fixed station using frequencies above 952 MHZ:	
Initial license, 5-year renewal and assignment of license -----	20
Yearly renewal for stations used in CATV systems -----	5
Stations using frequencies in the band 806-947 MHZ and providing service on a commercial basis--per channel -----	200
Common carrier public coast stations:	
Initial license, renewal and assignment of license -----	75
Amateur service:	
Modification of license without renewal -----	3
Special call sign (in addition to other applicable fee) ---	25

(b) Except as provided in paragraph (c) of this section, the fee set forth below shall accompany the following application or requests in the Safety and Special Radio Services:

Duplicate license ----- \$ 2

(c) Fees are not required in the following instances:

(1) Applications filed in the Police, Fire, Forestry Conservation, Highway Maintenance, Local Government and State Guard Radio Services.

(2) Applications filed by governmental entities in any of the Safety and Special Radio Services.

(3) Applications filed by the following in the Special Emergency Radio Service: hospitals, disaster relief organizations, beach patrols, school buses, and non-profit ambulance operators and rescue organizations.

(4) Applications filed in the Disaster Communications Service.

(5) Applications for ship inspections pursuant to the Great Lake Agreement, the Safety of Life at Sea Convention, and Parts II and III, Title III, of the Communications Act of 1934, as amended.

(6) Application for Novice Class license in the Amateur Radio Service, applications for amateur stations under military auspices, and applications filed in the Radio Amateur Civil Emergency Services (RACES).

(7) Operational Fixed Microwave applications filed for closed Circuit Educational Television Service.

(8) Applications for Aeronautical Radionavigation Stations, Aeronautical Search and Rescue Stations, and any applications filed by the Civil Air Patrol or its component units in the Safety and Special Radio Services.

(9) Applications for licenses for aircraft stations to operate with only an emergency locator transmitter (ELT); or an application for only an emergency position indicating radio-beacon (EPIRB) station; or an application for modification of a ship station license to include authority for operation of an EPIRB.

(10) Amendments to applications for authorizations in the Safety and Special Radio Services if the amended application on an original filing would not have required a higher fee than that already paid for the application being amended. If a higher fee would have been required than that already paid, the applicant will be required to pay the difference upon filing the amendment. If the fee would have been lower, no refund will be made.

1.1116 Schedule of fees for Cable Television and Cable Television Relay Services. (a) Applications and petitions filed in the Cable Television Relay Services shall be accompanied by the fees prescribed below:

	<u>Fee</u>
Application in the Cable Television Relay (CAR) Service:	
For a construction permit -----	\$ 20
For a license or renewal -----	5
For a modification of construction permit or of a license-	5
For reinstatement of expired construction permit or	
license -----	5
For assignment of license or of construction permit, or	
for transfer of control -----	10
Application for certificate of compliance pursuant to 76.11--	15

NOTE 1: If multiple applications for certificates of compliance are simultaneously filed by cable television systems having a common headend and identical ownership but serving or proposing to serve more than one community, the full \$15 fee will be required for only one of the communities; a \$5 fee will be required for each of the other communities.

(b) An annual authorization fee shall be paid by each CATV system on or before April 1 of each year for the preceding calendar year. The fee for each system shall be equal to the number of its subscribers times 13 cents. The number of subscribers shall be determined by averaging the number of subscribers on the last day of each calendar quarter. (See 1.1102(f)).

NOTE 2: Where a system offers bulk-rates to multiple-outlet subscribers, such as apartment house or motel operators, each bulk-rate contract is viewed as a number of subscriptions to be calculated by dividing the total annual charge for the bulk-rate contract by the system's basic annual subscription rate for an individual household. (Thus, for example, if a cable television system charges an apartment house operator \$1,000 a year for a bulk-rate contract and charges individual households a basic rate of \$50 per year, the bulk-rate contract is counted as 20 subscriptions (i.e., $1,000 \div 50 = 20$.) Where a variety of "annual subscription rates" for individual households exists (e.g., \$50 per year, if paid in one sum, or \$60 per year, if paid on a per-month basis), the rate used in the subscriber formula shall be the lowest annual rate which is offered to individual subscribers (\$50 here). Likewise, if the bulk-rate contract is on a monthly basis, it shall be divided by the lowest monthly rate which is offered. In the preceding example, a \$50 per year charge should be viewed as a charge of \$4.17 per month. It is not contemplated, however, that such calculations should be made with respect to extra payments for additional cable television outlets within the same individual household.

1.1117 Schedule of fees for commercial radio operator examinations and licensing. (a) Except as provided in paragraphs (b) and (c) of this section, applications for commercial radio operator examinations and licensing shall be accomplished by the fees prescribed below:

	<u>Fee</u>
(1) Applications for new operator license or permit:	
First-class, second-class, or third-class, either	
radiotelephone or radiotelegraph -----	\$ 4

	<u>Fee</u>
Provisional radiotelephone third-class operator certificate with broadcast endorsement, one-year term -----	\$ 2
Restricted radiotelephone permit -----	4
Restricted radiotelephone permit (alien), five-year term -----	4
(2) Application for endorsement of license or permit:	
(3) Application for renewal of operator license or permit: First-class, second-class, or third-class, either radiotelephone or radiotelegraph -----	2
Restricted radiotelephone operator permit (alien)---	4
(4) Application for replacement or duplicate license or permit -----	2
(5) Application for certification card (Form 758-F) -----	2

(b) Whenever an applicant requests both an operator license or permit and an endorsement the required fee will be the fee prescribed for the license document involved only.

(c) No fee is required for applications for a replacement license or permit for a marriage-related change of name.

(d) When an application is filed for a new license or permit and the applicant fails to appear for the required examination within 18 months, the application will be null and void for failure to prosecute and no refund will be made.

(e) Operator authorizations are issued by the Commission subject to payment and receipt of the applicable fee pursuant to the requirements of 1.1102 of this chapter. In the case of operator authorizations, when the Commission is unable to collect the prescribed fee by a specified date upon notification mailed to the applicant at his last known address, the authorization will become null and void and ineffective after that date.

1.1120 Schedule of fees for equipment type approval, type acceptance and certification. Type approval, type acceptance, certification or approval of subscription television systems shall require payment of fees as prescribed below:

<u>(a) Certification</u>	<u>Application Fee</u>
(1) <u>Item</u> Application for certification of each receiver model: ³	
(a) Television broadcast receiver -----	\$ 250
(b) FM broadcast receiver (with or without other reception capability) -----	150
(c) Combination TV/FM broadcast receiver (with or without other reception capability) -----	300
(d) All other receivers -----	150
(2) Application for certification of equipment operating under Part 18 ³ (N fee required for registration for use of industrial heating equipment on Form 724 in accordance with 18.116 of the Commission's Rules) -----	150

1.1120(a)-(d)

	<u>Item</u>	<u>Application Fee</u>
(3)	Application for certification of equipment (Other than receivers) operating under Part 15 ³	\$150
(4)	Application for certification of EBS Attention Signal decoder operating under Part 73 ^{11,12} (See footnotes at end of table)	150

(b) Type acceptance

(1)	Application for type acceptance for each equipment 1 2 3 4	200
(2)	Application for the addition of one or more rule parts to existing type acceptance for each equipment type as identified by manufacturer or trade name and type number	150
(3)	Approval of subscription television system	1500
(4)	Application for type acceptance of EBS Attention signal encoder operating under Part 73 ¹²	200

(c) Type Approval ⁵ See footnotes at end of fee table

	<u>Item</u> ⁶	<u>Filing Fee</u> ⁷	<u>Grant Fee</u> ⁷
(1)	Applications for type approval of equipment requiring tests: ⁸ ⁹		
	a. Part 73:		
	1. and 2 deleted.		
	3. Broadcast antenna phase monitors	2,400	800
	4. Other broadcasting equipment	1,200	400
	b. Parts 81 and 83:		
	1. Ship transmitters, including life-boat transmitters	1,200	400
	2. Radar	900	300
	3. Ship automatic alarms	3,000	1,000
	4. Ship automatic alarm keyers	750	250
	5. Other maritime devices	750	250
	c. Part 15:		
	1. Wireless microphones	450	150
	2. Auditory training transmitters (72-76 MHz)	1,200	400
	3. Class I TV devices:		
	If rated to operate on 1 or 2 channels	1,500	500
	If rates to operate on more than 2 channels, for each channel over 2	750	250
	4. Other Part 15 devices	450	150
	d. Part 18:		
	1. Medical diathermy and Subpart H equipment (13.56, 27.12, 40.68 MHz)	750	250
	2. Medical diathermy, microwave ovens and other Subpart H equipment (915 MHz and above)	900	300

	<u>Item</u>	<u>Filing Fee</u>	<u>Grant Fee</u>
	3. Ultrasonic -----	\$ 450	\$ 150
	4. Other Part 18 devices -----	750	250
(2)	Applications for type approval of equipment not requiring tests ⁹ -----	75	25
(3)	Applications for approval of modifications in existing type approved equipment:		
	(a) Modifications which require retesting	(10)	(10)
	(b) All other modifications -----	75	25
(4)	Correction of equipment deficiencies: Application for type approval where unit has been previously rejected for deficiency and is resubmitted for test- ing -----	(10)	(10)

¹The receiver part of a transceiver or a unit which includes a transmitter and receiver shall be separately certificated. The application for receiver certification shall be filed simultaneously with, but under separate cover from, the application for type acceptance.

²In the case of an equipment in which one or more receivers and transmitters are packaged as an individual equipment and identified by a single type number, each receiver shall be separately certificated and each transmitter shall be separately type accepted. The application(s) for certification for each receiver shall be filed simultaneously with, but under separate cover from, the application(s) for type acceptance.

³Application for certification or type acceptance of equipments which bear different identification will be considered separate applications, regardless of whether such equipment may be otherwise identical.

⁴Fees for type acceptance are not required in the following cases:

(a) When a request for type acceptance is included in an application for station license and covers only the item of equipment to be authorized in that particular station.

(b) When a request is made by the licensee of a station for approval of modifications to a specific item of existing type accepted equipment authorized in that particular station.

⁵Whenever an item subject to type approval is required to comply with more than 1 set of technical specifications, separate fees will be required for each set of technical specifications for which compliance is examined. For example, a frequency monitor for AM and FM broadcasts will require payment of fees applicable to each. Likewise combination units of items of the same type, for example, a combination of two radars, will require payment of 2 fees.

⁶A separate application, with payment of appropriate fees, is required for each equipment bearing different identification, whether in trade name or model number, even though such equipment may otherwise be identical to another. However, see note 9 below.

⁷The filing fee must be remitted with the application. The applicant may include the grant fee if he desires; otherwise the grant fee shall be remitted within the prescribed 45 days after grant of type approval. See 1.1102 of this chapter.

1.1120 Notes

⁸ A single application is required for a combination under a single identification of two or more equipments which are subject to type approval, such as a combination of two radars. However, payment of separate fees will be required for each equipment which is tested. For an equipment which is subject two two or more sets of technical specifications in the rules, separate fees will be required for each set of tests.

⁹ For a family or a series of equipment models having the same radio-frequency generator or transmitter and so nearly identical in design and construction that tests on only one model will be required, the model tested will be subject to the fees specified in paragraph (c) (1), and the other models in that series will be subject to the fees specified in paragraph (c) (2). For example, this would apply to two or more models of microwave ovens identical except for identification, styling, and minor electrical or mechanical changes. Likewise, it would apply to two or more models of marine radars which employ the same transmitter but with different combinations of accessories. However, initial applications for type approval which request use of alternate magnetrons or other critical components will require payment of the fee indicated in paragraph (c) (1) plus the fee required in paragraph (c) (3) a.

¹⁰ 75 percent of the filing and grant fees specified in (1) above for the particular class of equipment.

¹¹ If the decoder is included as an integral part of a receiver subject certification, the fee for certification of that category receiver shall apply, in lieu of this amount, for certification of the combination.

¹² Fees for type acceptance and certification of EBS Attention Signal encoders and decoders, respectively, are not required when the request for type acceptance or certification covers devices constructed by stations licensed under Part 73 for use only at their particular station. Marketing of such devices is prohibited.

SUBPART H -- EX PARTE PRESENTATIONS
GENERAL

§1.1201 Definitions. (a) Restricted proceeding. A proceeding of the type listed in 1.1203 or 1.1207.

(b) Commission personnel. All members, officers, and employees of the Commission.

(c) Decision-making Commission personnel. Those Commission personnel listed in §§1.1205 and 1.1209, and 1.1213.

(d) Non-decision-making Commission personnel. All Commission personnel other than decision-making Commission personnel.

(e) Interested person. Any person having a direct or indirect interest in the outcome of a restricted proceeding, or a non-restricted rule making proceeding, included the following:

(1) Parties to the restricted proceeding.

(2) Any other person who might be aggrieved or adversely affected by the outcome of the restricted proceeding. See sections 402(b) (6) and 405 of the Communications Act as amended; see also 28U.S.C. 2344.

(3) Agents for persons who might be aggrieved or adversely affected by the outcome of the restricted proceeding, including attorneys and consulting engineers.

(4) Persons representing the interests of parties to the proceeding or of others who might be aggrieved or adversely affected by the outcome of the proceeding, whether or not such persons act with the knowledge and consent of those whose interest they represent.

(f) Presentation. Any communication going to the merits or outcome of any aspect of a restricted proceeding.

NOTE: The term "presentation" is narrower than the general term "communication." For a discussion of the term "presentation," see 1 F.C.C. 2d (1965) at paragraphs 19-25; ---FCC 2d ---(1980) (i.e. this order), at paragraphs 2, 39, 49 and nn 2, 21.

(g) Ex parte presentation. (1) Any written presentation, made to decision-making personnel by another person, which is not served on the parties to the proceeding. See §§1.47 and 1.211.

NOTE: Comments and reply comments submitted in informal rule making proceedings pursuant to 1.415 and 1.419 are not considered ex parte presentations even though they are not served on other parties.

(2) Any oral presentation, made to decision-making personnel by any other person, without advance to the parties to the proceeding and opportunity for them to be present.

(h) Non-restricted rule making proceeding. A proceeding of the type listed in 1.1211.

(i) Professional employees. Lawyers, engineers, economists, accountants and any other staff members having substantive input into a proceeding.

(2) Any oral presentation, made to decision-making Commission personnel by any other person, without advance notice to the parties to the proceeding and opportunity for them to be present.

§ 1.1203 Restricted adjudicative proceedings. (a) All adjudicative proceedings, including the following, are "restricted" from the time they are designated for hearing until they are removed from hearing status, or have been decided by the Commission, and are no longer subject to reconsideration by the Commission or to review by any court:

(1) Any proceeding involving the issuance, renewal, modification or assignment of any instrument authorizing the construction or operation of radio facilities under Title III of the Communications Act of 1934, as amended.

(2) Any proceeding involving the transfer of control of a corporate licensee or permittee under section 310 of the Communications Act.

(3) Any revocation and/or cease and desist proceeding under section 312 of the Communications Act, unless and until the hearing is waived pursuant to the provisions of § 1.92.

(4) Any proceeding involving the issuance or suspension of an operator license or permit under section 303(1) or (m) of the Communications Act.

(5) Any proceeding conducted pursuant to the provisions of section 206, 207, 212, 214(a), 221(a), of the Communications Act.

(6) Any proceeding conducted pursuant to the provisions of section 201(c)(6), (7) or (9), or section 304(f), of the Communications Satellite Act of 1962.

(b) In the following circumstances, in addition, proceedings involving applications filed under section 308 of the Communications Act are "restricted", as to interested persons, prior to their designation for hearing:

(1) Application proceedings are restricted as to interested persons from the day on which a petition to deny is filed. (See section 309(d) of the Communications Act.) If the petition is denied, the proceeding is restricted until the order disposing of the petition is no longer subject to reconsideration by the Commission or to review by any court. If the proceeding is designated for hearing paragraph (a) of this section applies.

(2) Application proceedings are restricted as to interested persons from the day on which public notice of the filing of a mutually exclusive application is given. Prior to the day on which public notice is given, such proceedings are restricted as to any interested person having actual knowledge that a mutually exclusive application has been filed. If action is taken by the applicants (or any of them) looking toward removal of the conflict between the applications, the restrictions continue until such action has been approved by the Commission and the Commission's order with respect thereto is no longer subject to reconsideration by the Commission or to review by any court. See § 1.525. If the proceeding is designated for hearing, paragraph (a) of this section applies.

(1) Except as provided in subdivision (ii) of this subparagraph, the "Public Notices" issued at regular intervals listing all applications and major amendments thereto which have been tendered (or, in non-broadcast services, accepted) for filing

shall constitute public notice of the filing of a mutually exclusive application. See §§1.564(c), 1.962(e) and 21.27(b) of this chapter.

(ii) Where there is doubt as to whether two applications are in fact mutually exclusive, or where the conflict between the applications does not clearly appear from such regularly issued "Public Notices", the Commission will endeavor to issue specific public notices stating that there is a possibility of conflict between the applications. In such circumstances, the specific public notice, rather than the regularly issued "Public Notices" of applications tendered (or accepted) for filing, shall constitute public notice for purposes of this section. (Such public notices are based on a preliminary review of the applications by the administrative staff and are accorded no significance in determining whether the applications should be designated for hearing.)

(c) Cable television proceedings on a petition for special relief or an application for certificate of compliance are restricted as to interested persons from the day on which oppositions or objections are filed pursuant to §76.7(d) or §76.27 of this chapter. If the proceeding is terminated without hearing, the proceeding is restricted until the order terminating the proceeding is no longer subject to reconsideration by the Commission or to review by any court. If the proceeding is designated for hearing, paragraph (a) of this section applies.

§1.1205 Decision-making Commission personnel (restricted adjudicative proceedings).

The following categories of persons are designated as decision-making Commission personnel in restricted adjudicative proceedings:

- (a) The Commissioners and their personal office staffs.
- (b) The Chief of the Office of Opinions and Review and his staff.
- (c) The Review Board and its staff.
- (d) The Chief Administrative Law Judge, the Administrative Law Judges and the staff of the Office of Law Administrative Law Judges.
- (e) The General Counsel and his staff.
- (f) The Chief Engineer and his staff.
- (g) The Chief of the Office of Plans and Policy and his staff.

§1.1207 Restricted rule making proceedings.

Except as otherwise ordered by the Commission, the following rule making proceedings are "restricted" from the day they are instituted until they have been decided by the Commission and are no longer subject to reconsideration by the Commission or review by the court.

- (a) Any proceeding conducted pursuant to the provisions of section 201(a), 204, 205, 213(a), 214(d), 221(c), or 222 of the Communications Act.
- (b) Any proceeding involving the establishment of "charges, classifications, practices, regulation, and other terms and conditions", or the allocation of available facilities and stations among users, conducted pursuant to the provisions of section 201(c)(2) of the Communications Satellite Act of 1962.
- (c) Any rate making proceeding conducted pursuant to the provisions of section 201(c)(5) of the Communications Satellite Act of 1962.
- (d) Any informal rulemaking proceeding which, in the Commission's judgment, involves "competing claims to a valuable privilege". Such proceedings will be deemed "restricted" from the date on which a notice of proposed rulemaking is issued.

§1.1209. Decision-making Commission personnel (restricted rulemaking proceedings).

The following categories of persons are designated as decision-making Commission personnel in restricted rule making proceedings:

- (a) The Commissioners and their personal office staff.
- (b) The Chief of the Office of Opinions and Review and his staff.
- (c) The Chief Administrative Law Judge, the Administrative Law Judges, and the staff of the Office of Administrative Law Judges.
- (d) The Chief of the Common Carrier Bureau and his staff; PROVIDED, HOWEVER, That in any restricted rulemaking proceeding where the Commission directs a separated trial staff to participate, the Chief, Hearing and Legal Division of the Common Carrier Bureau shall be a party in the proceeding and he and his staff shall be non-decision-making personnel. In such cases the Chief of the Hearing and Legal Division and his staff will be separated from the Commission, the presiding Administrative Law Judge, the Office of General Counsel, and the Chief and Deputy Chief and all division Chiefs of the Common Carrier Bureau but are unrestricted in their access to all other Commission personnel.

(NOTE) -- Notwithstanding the requirements of §1.1221 or any other provision of this chapter to the contrary, in restricted rule-making proceedings, the Chief, Hearing and Legal Division and his staff shall be separated from decision-making personnel only to the extent indicated in this paragraph.

- (e) The General Counsel and his staff.
- (f) The Chief Engineer and his staff.
- (g) The Chief of the Cable Television Bureau and his staff when participating in proceedings involving service by common carriers to cable television systems.
- (h) The Chief of the Office of Plans and Policy and his staff. In a restricted informal rule making proceeding, the Commissioners and all professional employees of the agency who are involved in the proceeding are considered decision-making personnel.

1.1211 Non-restricted rule making proceedings. Any informal rule proceeding which, in the Commission's judgment does not involve "competing to a valuable privilege" is a non-restricted rule making proceeding.

1.1213 Decision-making Commission personnel (non-restricted rule making proceedings). In a non-restricted rule making proceeding, the Commissioners and all professional employees of the agency who are involved in the proceedings are considered decision-making personnel.

PROHIBITED PRESENTATIONS

§1.1221 Presentations prohibited in restricted proceedings which have been designated for hearing. Except as provided in 1.1227, the following presentations are prohibited in restricted proceedings which have been designated for hearing:

(a) Oral presentations. Persons outside the Commission and non-decision making Commission personnel shall not, directly, or indirectly, make or attempt to make any oral ex parte presentation.

(b) Written presentations. Interested persons and non decision-making Commission personnel shall not, directly, or indirectly, make or attempt to make any written ex parte presentation.

§1.1223 Presentations prohibited in restricted adjudicative proceedings prior to their designation for hearing. (a) As provided in §1.1203(b), certain application proceedings are "restricted" following the submission of a petition to deny or public notice of the filing of a mutually exclusive application. Except as provided in §1.1227, no interested person shall, directly or indirectly, make or attempt to make any oral or written ex parte presentation to decisionmaking Commission personnel concerning such a proceeding. Nor, in the absence of public notice, shall such an ex parte presentation be made, directly or indirectly, by an interested person having actual knowledge that a mutually exclusive application has been filed.

(b) As provided in §1.1203(c), certain cable television proceedings are "restricted" following the submission of an opposition to a petition for special relief or an objection to an application for a certificate of compliance. Except as provided in §1.1227, no interested person shall, directly or indirectly, make or attempt to make any oral or written ex parte presentation to decisionmaking Commission personnel concerning such a proceeding.

§1.1225 Solicitation of ex parte presentations. (a) No person shall solicit or encourage others to make any presentation which he is himself prohibited from making under the provisions of this subpart.

(b) Except as provided in §1.1227, decisionmaking personnel shall not make or cause to be made, solicit or encourage ex parte presentations from any person and shall not entertain ex parte presentations which are made to them.

§1.1227 Permissible ex parte communications. The following communications shall not be considered to be ex parte presentations prohibited by the provisions of this subpart:

(a) Ex parte communications authorized by statute or by the Commission's rules. (See, for example, §1.333(d).) However, pleadings which are required to be served but which may be ruled on ex parte do not fall within this category. (See, for example, §§1.296 and 1.298(a); such pleadings may not be submitted ex parte.)

(b) Such ex parte communications initiated by the staff of the Common Carrier Bureau or the Cable TV Bureaus may be necessary for the adduction of record evidence in restricted rule making proceedings.

(c) Any communication made by or to the General Counsel or his staff concerning judicial review of any matter which has been decided by the Commission.

(d) Any communication from an agency of the Federal Government involving classified security information.

(e) Any request for information solely with respect to the status of a restricted proceeding. (Interested persons, however, are prohibited from directly or indirectly soliciting ex parte status inquiries.)

(f) Any communication between decision-making and non-decision-making Commission personnel prior to the designation of a restricted proceeding for hearing.

1.1229 Presentations prohibited in restricted informal rule making proceedings. Except as provided in 1.1227, once a notice of proposed rule making has been issued in a restricted informal rule making proceeding, persons outside the Commission are prohibited from directly or indirectly making or attempting to make any written or oral ex parte presentation until the proceeding has been decided by the Commission and is no longer subject to consideration by the Commission or review by any court.

1.1231 Presentations in non-restricted informal rule making proceedings.

(a) Except as provided in 1.1227 once a notice of proposed rule making has been issued in a non-restricted informal rule making proceeding, ex parte presentations are prohibited between the time a draft order proposing a substantive disposition of any such proceeding is placed on the Commission's Sunshine Agenda and the time the Commission acts on that draft order, and either releases a final order or returns the matter to the staff for further consideration.

(b) At all other times in non-restricted informal rule making proceedings, ex parte presentations are permitted. However, once a notice of proposed rulemaking has been issued, the following procedures must be observed (except with respect to communications permitted under 1.1227) until the proceeding has been decided by the Commission and is no longer subject to reconsideration by the Commission or review by any court.

(1) Written ex parte presentations initiated by persons outside the Commission. No interested person may submit a written ex parte presentation to a Commissioner or Commission staff member unless that person also submits a copy of that presentation under separate cover to the Commission's Secretary for inclusion in the public record. The presentation must indicate on its face that a copy has been submitted to the Secretary, and must indicate by docket number the particular proceeding(s) to which it relates.

(2) Oral ex parte presentations initiated by persons outside the Comm. No interested person may present data or arguments in an oral ex parte presentation which are not already reflected either in written comments previously submitted in the relevant proceeding, or in a written memorandum submitted to the Secretary (with a copy to the Commissioner or staff member involved) on the day of the presentation.

(3) Ex parte presentations initiated by persons within the Commission; spontaneous ex parte presentations. A commissioner or professional employee of the agency who initiates an ex parte presentation or is involved in a spontaneous ex parte presentation must insure that any significant data or arguments presented thereby are reflected in the public record before the commission issues a final order in the relevant proceedings.

(4) Notice. The Commission will give notice of written ex parte presentations and of memoranda reflecting oral ex parte presentations. It will not give separate notice of oral presentations the substance of which are already reflected in written comments filed pursuant to 1.415. However, it will publish lists containing the dates of all meetings between Commissioners and persons outside the agency in which ex parte presentations are made.

(5) Opportunity to respond. Responses to written or oral ex parte presentations may be made at any time except when prohibited by paragraph (a) of this section. Responses should not raise new matters and are subject to the same procedures as initial presentation.

PROCEDURES FOR HANDLING EX PARTE
COMMUNICATIONS

§1.1241 Written ex parte communications. (a) To the extent possible, written ex parte communications not authorized under §1.1227 will be forwarded to the Executive Director rather than to the addressee.

(b) Unauthorized written ex parte communications which reach decision-making Commission personnel will be forwarded by them to the Executive Director. If the circumstances in which an unauthorized written ex parte presentation is made are not apparent from the presentation itself, a statement describing those circumstances shall be submitted to the Executive Director with the presentation.

(c) Unauthorized written ex parte communications, and all statements and correspondence pertaining thereto, will be placed in a public file, which will be associated with, but not made a part of, the file or record of the restricted proceeding to which the communication pertains. Prior to designation for hearing, no such communication, statement or correspondence shall be considered, without disclosure, in determining the merits of a restricted proceeding. After designation for hearing, no such materials shall be considered in determining the merits of a restricted proceeding unless they are made a part of the record of that proceeding.

(d)(1) If, in the judgment of the Executive Director, any unauthorized written ex parte presentation forwarded to him is prohibited by §1.1221(b) or §1.1223; or if in his judgment the presentation was solicited or encouraged in violation of §1.1225; or if in his judgment the presentation should, for any other reason, be brought specifically to the attention of the parties, the Executive Director will serve copies of the presentation, together with copies of any statement describing the circumstances in which it was made, upon the parties to the proceeding.

(2) If the written presentation is voluminous or the parties numerous, or if other circumstances satisfy the Executive Director that service of the presentation would be unduly burdensome, he may (in lieu of service) notify the parties to the proceeding that the presentation has been made and that it is available for public inspection.

(e) A copy of any statement describing the circumstances in which any unauthorized written ex parte presentation was submitted will be forwarded to the person who submitted the presentation. Within 10 days after the statement is mailed to him, the person who submitted the presentation may himself file with the Executive Director a notarized statement with regard to these circumstances, which the Executive Director (if he deems service appropriate) may serve upon parties to the proceeding.

(f) The procedures outlined in paragraphs (a)-(e) of this section will also apply in non-restricted informal rulemaking proceedings.

§ 1.1243 Oral ex parte communications. (a) If an unauthorized oral ex parte presentation is made to decision-making Commission personnel, they will advise the person making the presentation that it is prohibited and terminate the discussion of such matters.

(b) If an unauthorized ex parte presentation has in fact been made, the person to whom the presentation was made shall forward to the Executive Director a statement containing such of the following information as is known to him:

- (1) The name of the restricted proceeding.
- (2) The name and address of the person making the presentation and his relationship (if any) to the parties to the proceeding or their attorneys.
- (3) The date and time of the presentation, its duration, and the circumstances (telephone, personal interview, casual meeting, etc.) under which it was made.
- (4) A brief statement as to the substance of the matters discussed.
- (5) Whether the person making the presentation persisted in doing so after having been advised that the presentation is prohibited.
- (6) The date and time at which the statement was prepared.

(c) All statements submitted to the Executive Director pursuant to the provisions of this section, and all correspondence pertaining thereto, will be placed in a public file, which will be associated with, but not made part of, the file or record of the restricted proceeding to which the presentation pertains. Prior to designation for hearing, no such presentation, statement or correspondence shall be considered, without disclosure, in determining the merits of a restricted proceeding. After designation for hearing, no such materials shall be considered in determining the merits of a restricted proceeding unless they are made a part of the record of that proceeding.

(d) All statements submitted to the Executive Director pursuant to the provisions of this section shall be served by the Executive Director on the parties to the proceeding. If the parties are numerous, or if other circumstances satisfy the Executive Director that service of the statement would be unduly burdensome, he may (in lieu of service) notify the parties to the proceeding that the presentation has been made and that a statement with respect to it is available for public inspection.

(e) The Executive Director will forward to the person who made the presentation a copy of the statement prepared by the person to whom the presentation was made. Within 10 days after that statement is mailed to him, the person who made the presentation may himself file with the Executive Director a notarized statement with respect to the substance of the presentation and the circumstances in which it was made, which the Executive Director (if he deems service appropriate) may serve upon parties to the proceedings.

(f) The procedures outlined in paragraphs (a)-(e) of this section will also apply in non-restricted informal rulemaking proceedings.

§ 1.1245 Disclosure of information concerning ex parte presentations.

Any party to a restricted proceeding or a non-restricted informal rulemaking proceeding who has substantial reason to believe that an unauthorized ex parte presentation has been solicited, attempted or made or who has information regarding such a presentation shall promptly advise the Executive Director in writing of all the facts and circumstances concerning that presentation which are known to him.

§ 1.1251 Sanctions. (a) Parties. 1 Upon notice and hearing, any party to a restricted proceeding who directly or indirectly makes any unauthorized ex parte presentation, who encourages or solicits others to make any such presentation, or who fails to advise the Executive Director of the facts and circumstances concerning an unauthorized ex parte presentation (see § 1.1245), may be disqualified from further participation in that proceeding. Such alternative or additional sanctions as may be appropriate may be imposed.

(2) To the extent consistent with the interest of justice and the public, a party who has made an ex parte presentation may be required to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected.

(b) Commission personnel. Violations of the provisions of this subpart by Commission personnel will be disposed of in accordance with the procedures set forth in Administrative Order No. 10 and the penalties therein specified.

(c) Other persons. Such sanctions as may be appropriate under the circumstances will be imposed upon other persons who violate the provisions of this subpart.

(d) The sanctions outlined in paragraphs (a)(1), (b) and (c) of this section will also apply in non-restricted informal rulemaking outlined in paragraph (a)(2) of this section will not apply in non-restricted informal rulemaking proceedings.

SUBPART 1 - PROCEDURES IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY
ACT OF 1969

1.1301 Basis and purpose. The provisions of this subpart implements 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 those Commission actions which may or will have a significant impact on the quality of the human environment.

1.1304 Information and assistance. For general information and assistance concerning the provisions of this subpart, the Office of General Counsel may be contacted, (202) 632-6990. For more specific information, the Bureau responsible for processing a specific application should be contacted.

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 delineated 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)-(5), or
- (2) Involve high intensity lighting under 1.1307(a)(6).
- (3) Results in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 1.1307(b).

Note 1--The provisions of 1.1307(a) do not encompass the mounting of antennas on an existing building or antenna tower, unless the antenna(s) to be mounted is (are) subject to the provisions of 1.1307(b) and would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in 1.1307(b). Otherwise, the use of existing buildings and towers is an environmentally desirable alternative to the construction of new towers and is encouraged.

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.

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).

1.1307 Actions which 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 and officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that will affect districts, sited, buildings, structures or objects, significant in American history, architecture, archeology or culture, that are listed in the National Register of Historic Places or are eligible for listing. (See 36CFR paragraphs 60,63 and 800).

Note-The National Register is updated and re-published in the Federal Register each year in February.

(4) Facilities to be located in a floodplain (See Executive Order 11988).

(5) 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).

(6) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are located in residential neighborhoods, as defined by the applicable zoning law.

(b) In addition to the actions listed in paragraph (a) Commission actions granting construction permits, licenses to transmit or renewals thereof, or Commission actions authorizing modifications in existing facilities, will require the preparation of an EA if the particular facility or operation would cause exposure of workers or the general public to levels of radiofrequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300kHz to 100 GHz," (ANSI C95-1-1982), issued by the American National Standards Institute (ANSI), 1430 Broadway, New York, N.Y. 10018. Copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th St., New York, N.Y. 10017.

Note - The provisions of paragraph (b) shall only apply to facilities and services licensed or authorized under Parts 5, 25, 73 and 74 (Subparts A and G only) of the FCC Rules and Regulations.

If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall 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, (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 submit an EA. The Bureau will review and consider the EA as in paragraph (c) of this section.

1.1308 Consideration of environmental assessments (EAs); findings on No significant impact. (a) Applicants shall prepare EAs for action 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.

(c) If the Bureau or the Commission determines, based on an independent review of the EA, 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 that the proposal would not have a significant impact, it will make a finding of no significant impact. Therefore, the application will be processed without further consideration of environmental effect. Pursuant to CEQ regulations, see 40 CFR 1501.4 and 1506.6, the applicant must provide the community notice of the Commission's finding of no significant impact.

1.1309 Application amendments. Applicants are permitted to amend their applications to reduce, minimize or eliminate potential environmental problems. 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.

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.

(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 environments impact statement process.

1.1312 Facilities for which no Construction permit is required. In the case of facilities for which no construction permit is required or for which a waiver request for a construction permit has been granted under 47U.S.C. 319(d), the information required by 1.1311 shall be submitted and ruled on by the Commission, and the environmental processing (if invoked) shall be completed before authorization of the facilities is granted.

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 as petitions to deny.

(b) Informal objections which are based on environmental considerations must be filed 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.

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 practical feasible, the Bureau will publish in the Federal Register a Notice of Intent to prepare EISs. The Notice shall briefly identify the proposal, concisely described 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).

NOTE - The Advisory Council of Historic Preservation has adopted formal procedures for such consultation. See 36 CFR Part 800.

(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.

(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) & 1.1317(b).

(i) Guidance concerning preparation the Draft and Final Environmental Statements is set out in 40 CFR Part 1502.

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 send five copies of the Statement, or a summary, to the Office of Federal Activities, Environmental Protection Agency. Additional copies, or summaries, will be sent to the appropriate regional office of the Environmental Protection Agency. 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 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.

(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 mailed to the applicant by the person who files them pursuant to 47 CFR 1.47. An original and one copy shall be filed with the Commission. 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 file reply comments within 15 days after the time for filing comments has expired. Reply comments shall be filed with the Commission in the same manner as comments, and shall be 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.

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 1.101-1.120).

(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.

1.1319 Consideration of the environmental impact statements. (a) If the action is subject to a hearing: (1) In rendering his initial decision, the Administrative Law Judge shall utilize the FEIS in considering the environmental issues. In a comparative context, the respective parties shall be afforded the opportunity to comment on the FEIS, and the Administrative Law Judge's decision shall contain an evaluation of the respective applications based on environmental and non-environmental public interest factors.

(2) Upon review of an initial decision, the Review Board and/or 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.

SUBPART J -- POLE ATTACHMENT
COMPLAINT PROCEDURES

1.1401 Purpose. The rules and regulations contained in subpart J of this part provide complaint and enforcement procedures to ensure that rates, terms and conditions for cable television pole attachments are just and reasonable.

1.1402 Definitions. (a) The term "utility" means any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part for wire communications. Such term does not include any railroad, any person who 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 to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(c) 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

(d) The term "complaint" means a filing by either a cable television system operator or a utility 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 or a utility who files a complaint.

(f) The term "respondent" means a cable television system operator or a utility 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.

1.1403 Notice of removal and petition for temporary stay. (a) A utility shall provide a cable television system operator 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 a cable television pole attachment agreement, or (2) any increase in pole attachment rates.

(b) A cable television system operator may file a "Petition for Temporary Stay" of the action contained in a notice received pursuant to paragraph (a) 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, a copy of the notice, and certification of service as required by section 1.1404(b) of this Subpart. The named respondent 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 Section 1.46.

1.1404 Complaint. (a) The complaint shall contain the name and address of the respondent, and shall be signed and verified by the complainant, or officer thereof if complainant is a corporation, and shall include a statement showing the matter complained of, Complainants may join together to file a joint complaint.

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1.1404 Complaint. (a) The Complaint shall contain the name and address of the complainant, name and address of the respondent, and shall contain a verification (in the form set forth in §1.721(b)), signed by the complainant or officer thereof if complainant or officer thereof if complainant is a corporation, showing complainant's direct interest in the matter complained of. Counsel for the complainant may sign the complaint. Complainants may join together to file a joint complaint.

(b) The complaint shall be accompanied by a certification of service on the named respondent and each State, Federal or local agency which regulates any aspect of service provided by the utility or cable television system named as either complainant or respondent.

(c) 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, and 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 system operator 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 such statement shall be accompanied by evidence of such use or designation, or by an explanation of why such evidence cannot be provided; and

(2) A statement that the cable television operator currently has attachments on the poles and such statement shall be accompanied by evidence of such attachment, or by an explanation of why such evidence cannot be provided.

(e) The complaint shall state with specificity the pole attachment rate, term or condition which is claimed to be unjust or unreasonable.

(f) In any case, where it is claimed that a term or condition is unjust or unreasonable, the claim shall specify all information and argument relied upon to justify said claim.

(g) In a case where it is claimed that either a rate is unjust or unreasonable or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information in support of said claim. The data and information shall include, where applicable:

- (1) The gross investment by the utility for pole lines;
- (2) The cross arm investment for pole lines;
- (3) The depreciation reserve from the gross pole line investment;
- (4) The depreciation reserve from the cross arm investment;
- (5) The total number of poles: (i) owned; and (ii) controlled or used by the utility;
- (6) The total number of poles which are the subject of the complaint.

(7) The number of poles included in (6) that are controlled or used by the utility through lease between the utility and other owner(s), and the annual amounts paid by the utility for such rental;

(8) The number of poles included in (6) that are owned by the utility and that are leased to other users by the utility, and the annual amounts paid to the utility for such rental;

(9) The annual carrying charges attributable to the cost of owning a pole. These charges may be expressed as a percentage of the net pole investment;

(10) The rate of return authorized for the utility for intrastate service;

(11) The average amount of usable space per pole for those poles used for pole attachments (13.5 feet may be in lieu of actual measurement, but may be rebutted);

(12) Reimbursements received from CATV operators for non-recurring costs; and

(h) If any of the information required in (g) of this section is not provided to the cable television operator by the utility upon reasonable request, the cable television operator 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 operator shall be dismissed where the utility has failed to provide the information in (g) of this section after such reasonable request.

(i) The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing.

(j) Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, (and exhibits shall be verified by the person who prepares them.)

§1.1405 File numbers. Each complaint which appears to be essentially complete under §1.1404 will be accepted and assigned a file number. Such assignment is for administrative purposes only and does not necessarily mean that the complaint has been found to be in full compliance with other sections in this Subpart. Petitions for temporary stay will also be assigned a file number upon receipt.

1.1406 Dismissal of complaints. (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 Section 1.1414 of this Subpart. Such certificate shall be conclusive proof of lack of jurisdiction of this Commission. 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 Section 1.1402(a) of this Subpart.

(b) If the complaint does not contain substantially all the information required under Section 1.1404 the Commission may dismiss the complaint or may require the complainant to file additional information. The complaint shall not be dismissed if the information is not available from public records or from the respondent utility after reasonable request.

(c) Failure by the complainant to respond to official correspondence or a request for additional information will be cause for dismissal.

(d) Dismissal under provisions of (b) above will be with prejudice if the complaint has been dismissed previously. Such a complaint may be refiled no earlier than six months from the date it was so dismissed.

1.1407 Response and reply. (a) Respondent shall have 30 days from the date the complaint was filed within which to file a response. Complainant shall have 20 days from the date the response was filed within which to file a reply. Extensions of time to file are not contemplated unless justification is shown pursuant to §1.46. Except as otherwise provided in §1.1403, no other filings and no motions other than for extension of time will be considered unless authorized by the Commission. The response should set forth justification for the rate, term, or condition alleged in the complaint not to be just and reasonable. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts and exhibits shall be verified by the person who prepares them. The response, reply, and other pleadings may be signed by counsel.

(b) The response shall be served on the complainant and all parties listed in complainant's certificate of service.

(c) The reply shall be served on the respondent and all parties listed in respondent's certificate of service.

(d) Failure to respond may be deemed an admission of the material factual allegations contained in the complaint.

1.1408 Number of copies and form of pleadings. (a) An original and three copies of the complaint, response, and reply shall be filed with the Commission.

(b) All papers filed in the complaint proceeding must be drawn in conformity with the requirements of Sections 1.49, 1.50 and 1.52.

1.1409 Commission consideration of the complaint. (a) In its consideration of the complaint, response, and reply, the Commission may take notice of any information contained in publicly available filings made by the parties and may accept, subject to rebuttal, studies that have been conducted. The Commission may also request that one or more of the parties make additional filings or provide additional information. Where one of the parties has failed to provide information required to be provided by these rules or requested by the Commission, or where costs, values or amounts are disputed, the Commission may estimate such costs, values or amounts it considers reasonable, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.

(b) The complainant shall have the burden of establishing a prima facie case that the rate, term, or condition is not just and reasonable.

(c) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this sub-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.

(d) If the Commission determines that the complainant has not established a prima facie case or that the rate, term, or condition complained of is just and reasonable, it shall deny the complaint.

1.1410 Remedies. 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:

(a) Terminate the unjust and unreasonable rate, term, or condition;

(b) Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the Commission; and

(c) 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 from the date that the complaint, as acceptable, was filed, plus interest.

1.1411 Meetings and hearings. The Commission may decide each complaint upon the filings and information before it, may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute, or may, in its discretion, order evidentiary procedures upon any issues it finds to have been raised by the filings.

1.1412 Enforcement. If the respondent fails to obey any order imposed under this subpart, the Commission on its own motion or by motion of the complainant may order the respondent to show cause why it should not cease and desist from violating the Commission's order.

1.1413 Forfeiture. (a) If any person willfully fails to obey any order imposed under this subpart, or any Commission, rule, or

(b) If any person shall in any written response to Commission correspondence or inquiry or in any application, pleading, report, or any other written statement submitted to the Commission pursuant to this subpart make any misrepresentation bearing on any matter within the jurisdiction of the Commission, the Commission may, in addition to any other remedies, including criminal penalties under Section 1001 of Title 18 of the United States Code, impose a forfeiture pursuant to Section 503(b) of the Communications Act, 47 U.S.C. 503(b).

1.1414 State certification. (a) 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 subscribers of cable television services 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), it will be rebuttable presumed that the state is not regulating pole attachments.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

1.1415 Other orders. The Commission may issue such other orders and so conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice.

SUBPART K -- IMPLEMENTATION OF THE EQUAL
ACCESS TO JUSTICE ACT (EAJA) IN
AGENCY PROCEEDINGS

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. 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.

1.1502. When the EAJA applies. The EAJA applies to any adversary adjudication pending before this agency at any time between October 1, 1981, and September 30, 1984. This includes proceedings begun before October 1, 1981, if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs.

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 this 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. Coverage of the EAJA begins at designation of a proceeding or issuance of a show cause order. Any proceeding in which the Commission may establish or fix a rate is not covered by the EAJA. Proceedings to grant or renew licenses are also excluded; but proceedings to 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.

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 \$1 million;
- (2) The sole owner of an unincorporated business who has a net worth of not more than \$5 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, or public or private organization with a net worth of not more than \$5 million and not more than 500 employees.

(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 designated.

(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, will be considered an affiliate for purposes of this part, unless the Administrative Law Judge 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 Administrative Law Judge 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.

1.1505 Standards for awards. (a) An eligible prevailing applicant shall receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Commission over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the appropriate Bureau (see section 1.21 of this chapter) whose representative shall be called "Bureau counsel" in this subpart. The Bureau may avoid an award by showing that its position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

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 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 Administrative Law Judge 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 reasonable 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.

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 attorney's qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than \$75.00 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.

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 for 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.

Information Required From Applicants

1.1511 Contents of application. (a) An application for an award of fees and expenses under EAJA shall identify the applicant and the proceeding for which an award is sought. The application shall 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. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed \$1 million (if an individual) or \$5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement 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(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. 1141(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.

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 section 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 Administrative Law Judge 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 Administrative Law Judge 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)-(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 Administrative Law Judge 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, sections 0.441-0.466 of this chapter.

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 this specific services performed, the rate at which each fee has been computed, any expense 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 Administrative Law Judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

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, 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 an Administrative Law Judge or the Review Board becomes administratively final; (2) issuance of an order disposing of any applications for review or petitions for reconsideration of the Commission's order in the proceeding; (3) if no application for review or petition for reconsideration is filed, the last date on which such an application or 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.

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 section 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 Administrative Law Judge 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 section 1.1526.

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 section 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 Administrative Law Judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

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 proceedings 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 the Administrative Law Judge approves the proposed settlement, it shall be forwarded to the Commission for final approval.

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 his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or 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.

(b) A request that the Administrative Law Judge 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.

1.1527 Decision. The Administrative Law Judge 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 on the applicant's eligibility and status as a prevailing party, 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 was substantially justified, whether the applicant unduly protracted the proceedings, 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.

1.1528 Commission review. Either the applicant or Bureau counsel may seek Commission review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with sections 1.276 - 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 Administrative Law Judge for further proceedings.

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 adversary adjudication has been sought by the applicant or any other party to the proceeding.

Text of Section 7 of the Act

Section 7 of the Radio Broadcasting to Cuba Act, Pub. L, 98-111, 97 Stat. 749 (1983) provides as follows:

Section 7 (a) It is the intent of the Congress that the Secretary of State should seek prompt and full settlement of United States claims against the Government of Cuba arising from Cuban interference with broadcasting in the United States. Pending the settlement of these claims, it is appropriate to provide some interim assistance to the United States broadcasters who are adversely affected by Cuban radio interference and who seek to assert their right to measures to counteract the effects of such interference.

(b) Accordingly, the agency may make payments to the United States radio broadcasting station licensees upon their application for expenses which they have incurred before, on, or after the date of this Act in mitigating, pursuant to special temporary authority from the Federal Communications Commission, the effects of activities by the Government of Cuba which directly interfere with the transmission or reception of broadcasts by these licensees. Such expenses shall be limited to the costs of equipment (replaced less depreciation) and associated technical and engineering costs.

(c) The Federal Communications Commission shall issue such regulations and establish such procedures for carrying out this section as the Federal Communications Commission finds appropriate. Such regulations shall be issued no later than one hundred and eighty (180) days after enactment of this Act.

(d) There are authorized to be appropriated to the Agency (United States Information Agency), \$5,000,000 for use in compensating United States radio broadcasting licensees pursuant to this section. Amounts appropriated under this section are authorized to be available for implementation.

(e) Funds appropriated for implementation of this section shall be available for a period of no more than four years following the initial broadcast occurring as a result of programs described in this Act.

(f) It is the sense of the Congress that the President should establish a task force to analyze the level of interference from the operation of Cuban stations experienced by broadcasters in the United States and to seek a practical political and technical solution to this problem.

(g) This section shall enter into effect on October 1, 1984.

Subpart L - Randon Selection
Procedures for Mass Media Services

General Procedures

1.1601 - 1.1621(b)(6)

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) Low Power Television and Television Translator Broadcasting.

1.1602 Designation for randon selection. Applications in the services specified in 1.1601 shall be tendered, accepted or dismissed, filed, publicly noted and subject to randon selection and hearing in accordance with any relevant rules. Competing applications for an initial license or construction permit shall be designated for randon 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 randon selection. The randon selection probablities will formula set out in rules 1.1621 through 1.1623.

1.1604 Post-selection hearings. (a) Following the randon selection, the Commission shall announce the "tentative selectee" and, where permitted by 73.3584 invite Petltions to Deny its application. Following the responsive pleadings thereto, the Commission shall:

(1) In the case of low power television stations, take action pursuant to either 73.3591, 73.3592 or 73.3593.

(b) If, after such hearing 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 applicant, in accordance with the provisions of this chapter.

(c) If, on the basis of the papers before it, the Commission determines that a substantial and material question of facts exists, it shall designate that question for hearing. Hearings may be conducted by the Commission or, in the case of a matter which requires oral testimony for its resolution, an Administrative Law Judge.

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 groupe 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.

1.1622 Preferences. (a) Any applicant desiring a preference 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 or 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% 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 2mV/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%.

(7) Multipoint Distribution Service station service area, computed in accordance with 21.902(d).

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 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 paragraph (g) of this section by the sum of such probabilities to determine the final selection percentage.

1.1701 Purpose (a) The regulations in this Subpart implement Subject 7 of the Radio Broadcasting to Cuba Act, Pub. L. 98-111, 97 Stat. 749 (1983). That status is referred to in this Subpart as "the Act".

(b) Section 7 of the Act provides for the payment of compensation by the United States Information Agency (USIA) to radio broadcast station licensees for allowable expenses they incur in mitigating interference from Cuba to the broadcast service they provide. Subsection 7(c) directs the Federal Communications Commission to issue appropriate regulations and establish procedures for carrying out Section 7.

(c) The regulations in this Subpart M establish the standards, requirements and procedures that the Federal Communications Commission will apply in making findings as to whether applicants for compensation under Section 7 of the Radio Broadcastings to Cuba Act qualify for it and if they do, in what amounts. The Commission will transmit those findings to the USIA for guidance in the discharge of the responsibility that the Act places upon the USIA to make such compensation payments.

1.1702 Definitation to Cuban interference. For the purposes of this Subpart M, Cuban interference to a United States AM broadcast station is radiation from a radio transmitter in Cuba at a level that, under the provisions of the Final Acts of the Regional Administrative Radio Conference, Rio de Janeiro 1981, ("the Rio AM Agreement") would be treated as causing objectionable interference if it occurred between signatory countries.

1.1703 Method for calculating the level of Cuban interference. (a) The FCC will prepare, periodically update, and make publicly available a list of Cuban stations known to be operating on the 107 channels allocated for AM broadcasting. The list will show the location and calculated operating power of each cuban station.

(b) In order to obtain the data needed to calculate the power of Cuban stations, the Commission will arrange for the monitoring of the groundwave signals of Cuban AM stations at suitable locations. The field strengths of the signals of Cuban stations operating on all 107 channels and the directions from which they are transmitted will be logged as nearly semi-monthly as practicable. This data so obtained will be used in making studies on the basis of which the location and transmitter power of each Cuban station will be calculated.

(c) In order to determine the existance and level of interference to United Statis AM radio broadcast stations for the purposes of this subpart, Cuban stations will be presumed to be operating at the locations and with the powers determined in the manner stated in paragraph (a) and (b) of this section; and the methods for calculating interference prescribed in the "Rio AM Agreement" referred to in 1.1702 will be used.

1.1704 Minimum level and duration of interference qualifying licensees for compensation. In order to be eligible for compensation under Section 7 of the Act, the licensee of a United States AM radio broadcast station that does not come within the exception under 1.1706(b) of this subpart must: (a) Using the methods provided in 1.1703(c) and treating the station's primary and secondary service areas seperately, show that a Cuban station causes objectionable interference to the affected station's signals in protion of its primary and secondary service area where at least 10% of the total population within that otherwise interference-free primary or secondary service area reside.

(b) Using the methods provided in 1.1705, show that the signals of a Cuban station have been detected within the service area of the affected station on at least half of the days during a prescribed test period. The reception of such Cuban signals must be separately shown to occur during that part of those parts of the day (i.e., during daytime hours, nighttime hours or both) when the interference pertinent to an application for compensation occurs.

1.1705 Method for determining duration of Cuban interference.

(a) Section 1.1703 prescribes how the existence and level of Cuban interference will be determined. This 1.1705 prescribes how the duration or incidence of Cuban interference will be determined in order to show compliance with the minimum interference "duration" requirements of 1.1704(b).

(b) Unless the exception in 1.1706(b) applies, applicants for compensation shall monitor and log the signals of interfering Cuban stations in the manner prescribed in paragraph (c) through (e) of this section and shall submit the results of such monitoring to the Commission.

(c) Using equipment and methods conforming with good engineering practice, licensees whose applications for compensation are based on Cuban interference experienced during daytime hours shall, on 60 consecutive days, take and log field strength measurements of the signal of the interfering Cuban station between two hours before local sunset during brief intervals when the transmitter of the affected station is turned off. Except as provided in paragraph (e)(1) of this section, measurements shall be taken within the portion of the station's otherwise interference-free service area where the calculations performed in accordance with 1.1703(c) predict that Cuban interference will occur.

(d) Applicants who experience interference by Cuban groundwave signals to their primary service areas at night shall similarly take and log field strength measurements as provided in paragraph (c) above, but during nighttime hours instead of during the daytime.

(e)(1) Applicants who experience nighttime interference by Cuban skywave signals to the primary service areas of their Class II or Class IV stations shall similarly take and log field strength measurements of the Cuban signals on 60 consecutive days during the nighttime hours between two hours after local sunset and two hours before local sunrise. Such measurements shall be taken in the general vicinity of the affected station's transmitter but not so close as to experience the effects of re-radiation from the station's own tower(s).

(2) Applicants who experience nighttime interference by Cuban skywave signals to their Class I stations shall take measurements as prescribed in the first sentence of paragraph (e)(1) above, at locations within the affected portion of their primary service areas, unless only their secondary service is affected. In the latter case, the measurements shall be taken within the affected portion of their secondary service area.

(f) The monitoring of Cuban signals prescribed in this section is designed to provide evidence of the duration of incidence on interfering Cuban signals for the purposes of determining compliance with the 50% requirement in 1.1704(b).

1.1708 Compensable costs. (a) The following costs are compensable under Section 7 of the Radio Broadcasting to Cuba Act.

(1) The prudently incurred cost of acquiring, installing, or constructing facilities specially authorized by the Federal Communications Commission for the purpose of mitigating the effects of interference from Cuba, less the amount of depreciation on equipment replaced by such specially authorized facilities that was reported in previously filed Federal income tax returns.

(2) Technical and engineering cost associated with the facilities changes so authorized. The costs allowable under this paragraph (2) shall include costs prudently incurred in planning, designing, engineering and testing such new facilities and in performing monitoring required by 1.1704(b) or monitoring performed by licensees who submitted the results to the Commission in support of their applications for authorization to change facilities to mitigate Cuban interference that were granted before March 15, 1984.

(b) The following costs are not compensable:

(1) Remuneration or expenses paid to persons, such as the station engineer, who are in the regular employ of the applicant provided that this shall not bar compensation for out-of-pocket outlays for payments to such employees for overtime work on the tasks listed in 1.1708(a)(2);

(2) Attorney's fees;

(3) The costs of acquiring title or leasehold interests in land; and

(4) Any part of costs incurred for the purpose of extending the interference-free service of stations beyond the area to which the existing affected station would provide interference-free service if the Cuban interference were not present.

1.1709 Requirements for filing applications for compensation.

(a) This section states the requirements for filing applications for compensation for expenses incurred in mitigation the effects of Cuban interference that are filed pursuant to this Subpart M. Applications for authorization by the Federal Communications Commission to make changes in authorized station facilities are governed by other applicable provisions of the FCC rules.

(b) Applications for compensation may be filed on or after the entry into effect of this Subpart M, by the licensees of AM broadcast stations in the United States who simultaneously file or had previously filed applications for authorization to change licensed station facilities in order to mitigate the effects of interference received from stations in Cuba. Applications shall be filed with the Secretary to the Federal Communications Commission, Washington, D.C. 20554.

(c) Applications for compensation need not use any particular form, but shall contain all the information required under Subpart M, and any supplemental information the Commission may request the applicant to file. When initially submitted, the applications need not be accompanied by the evidence of duration of interference required by 1.1704(b) and 1.1705 or the proof of costs required by 1.1709(f) that applicants file after the facilities changes have been completed.

(d) Applications for compensation, when initially filed, shall be accompanied by a statement, with supporting breakdown, of:

(1) The costs incurred, or the estimated costs expected to be incurred, for equipment and services that are compensable under Section 1.1708(a); and

(2) The amount of depreciation on replaced equipment that is deductible from compensation under Section 1.1708(a).

(e) The data concerning duration of interference required by 1.1704(b) and 1.1705 may be submitted in a supplemental filing for association with a previously filed application for compensation when the applicant completes the prescribed monitoring. However, if the applicant does not file such data within 120 days from the date of the filing of the application for compensation, or within such extended period as the Commission may for good cause permit, the application will be returned. In such case, any priority accrued under 1.1710 will lapse; and if the application is subsequently refiled, it will be treated as a new application under 1.1710(c).

(f) Upon the completion of facilities changes authorized to mitigate the effects of Cuban interference, applicants for compensation shall submit to the Federal Communications Commission a detailed financial statement of the out-of-pocket expenditures made for the equipment and services whose costs are compensable under Section 1.1708. The statement shall be supported by accompanying receipted bills, cancelled checks and such additional evidence of actual and prudent outlays for such compensable kinds of services and equipment as the commission may request in individual cases.

1.1710 Priorities. Because it is not possible to foresee the extent to which interference by Cuban stations may be experienced, and because it is therefore uncertain whether the available funds will be sufficient to cover all the allowable compensation payments to all qualifying applicants, the following priorities are established for eligibility for compensation payments, in order to provide an equitable basis for the distribution of available funds:

(a) First Priority: Applicants whose authorization of facilities changes to mitigate Cuban interference were issued by the Federal Communications Commission prior to October 4, 1983 (the date of the enactment of the Radio Broadcasting to Cuba Act) and whose applications for compensation are filed before October 1, 1984 (the date Section 7 of that Act enters into effect). Within this first priority group, priority will be accorded in the order in which such authorizations were granted.

(b) Second Priority: Applicants whose authorizations of facilities changes to mitigate Cuban interference were issued on or after October 4, 1983 and before the effective date of the regulations adopted in this Subpart M, and whose applications for compensation are filed no later than October 1, 1984. Within this second priority group will be accorded in the order in which the applications for authorization to make such facilities changes are filed with the Federal Communications Commission.

(c) Third Priority: Applicants who do not come within the first or second priorities groups and applicants whose priorities as a member of the second group have lapsed under 1.1709(e). Within this third priority group, priority will be accorded in the order of the filing or refiling of application for compensation that contain substantially all the information.

(d) The effect of the priority sequencing of applicants established under paragraphs (a) through (c), of this section, is governed by the fact that the responsibilities for processing and evaluating applications and for making the compensation payments, have by statute, been divided between the FCC and the USIA. While the FCC will initially receive, process and evaluate applications for compensation, the USIA has been designated by the Act as the agency that will make the payments and to whom appropriations for this purpose will be made. In these circumstances, the matter of priority standing of applicants for compensation will be dealt with as provided in paragraph (e) of this section.

(e) The FCC will determine the priority group in which each applicant for compensation falls and the applicant's priority within that group and will inform USIA and the applicant of that determination. However, the FCC does not administer the compensation payments or control the funds appropriated for those payments. The authority to perform those functions having been conferred by statute upon the USIA, it is for USIA to determine the manner in which the priorities established by the FCC are applied in practice in the administration of the compensation funds entrusted to the USIA. Accordingly, such questions as whether all applicants within a particular priority group who are found by the FCC to qualify for compensation will receive such compensation fully before any applicants in a lower priority group, or whether available funds (if inadequate to cover all qualifying applicants) will be pro-rated in some fashion among members of the same priority group, or otherwise, will be for the USIA to decide, taking into account the amounts of appropriated funds and the demand for them.

1.1711 Provisional and definitive findings of eligibility.

(a) As soon as practicable after the filing of applications containing all the information required under 1.1709(c), (d) and (e), the Commission will make a provisional findings as to whether the applicant meets the requirements of this Subpart M for compensation, and if so, in what estimated amount.

(b) When the facilities changes are completed and the documentation required by 1.1709(f) is filed, the Commission will make a definitive finding as to the amount of compensation for which applicant meets the requirements of this Subpart M. Such amount shall not exceed the amount of compensation determined in the provisional finding adopted under paragraph (a) of this section.

(c) The findings reached under paragraphs (a) and (b) of this section will be adopted by order, which will be published and transmitted to the USIA and the applicant. Such findings do not constitute entitlement to compensation, which will depend upon the availability of appropriated funds and the satisfaction of such requirements as may be established by the United States Information Agency which, under the Act, is responsible for making the compensation payments.

1.1712 Review of findings.

(a) Sections 0.61 and 0.283 of this chapter delegate to Chief Mass Media Bureau, the processing of applications for compensation under this Subpart M and the adoption of orders containing provisional and definitive findings as to the amount of compensation for which applicants qualify under the Radio Broadcasting to Cuba Act and the regulations in this subpart.

(b) Sections 1.101, 1.102(b), 1.103, 1.104, 1.106, 1.108, 1.110 (except the last sentence thereof), 1.113, 1.115 and 1.117 of this chapter, which relate to reconsideration and review of actions taken by the Commission and pursuant to delegation authority, and to effective dates and finality to actions, shall apply to orders making provisional or definitive findings under 1.1711.

(c) The commission condiders that orders adopted under 1.1711(a) or (b) by the Commission en banc but not those adopted under delegated authority by the Chief, Mass Media Bureau, are final orders subject to judicial review under Section 402(a) of 1934, as amended, 47 U.S.C. 402(a).

PART 1 - RULES OF PRACTICE AND PROCEDURE

IT IS PROPOSED TO ADD NEW SUBPART N

[Gen. Docket No. 84-533; 84-193]

**Rules To Implement Section 504 of the
Rehabilitation Act of 1973**

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: This proposed regulation provides for the enforcement of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Federal Communications Commission.

DATES: To be assured of consideration, comments must be in writing and must be received on or before November 18, 1985 and reply comments on or before December 18, 1985.

Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Office of the Secretary, Federal Communications Commission, located at 1919 M Street NW., Washington, DC 20554.

Comments received will be available for public inspection in the Public Reference Room of the Federal Communications Commission. Copies of this Notice are available on tape for those with impaired vision and may be obtained from the Consumer Assistance Office at the above address.

FOR FURTHER INFORMATION CONTACT:

Sharon B. Kelley, Office of General Counsel, (202) 632-6990.
Consumer Assistance Office, Office of Public Affairs, (202) 632-6999 (TDD), (202) 632-7260 (VOICE).

Commission shall proceed to make the necessary modifications.

(b) The Commission shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; 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 such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Commission, and make such information available to them in such manner as the Managing Director finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 1.1812-1.1829 [Reserved]

§ 1.1830 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity conducted by the Commission.

(b) (1) The Commission, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person 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 handicapped person 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 handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as

a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person 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 handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The Commission may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Commission establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Commission are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not, prohibited by this part.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 1.1831-1.1839 [Reserved]

§ 1.1840 Employment.

No qualified handicapped person shall, on the basis of handicap, 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 Part 1613, as well as the procedures set forth in the Basic Negotiations Agreement Between the Federal Communications Commission and National Treasury Employees Union (effective June 22, 1982) 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.

§ 1.1841-1.1848 [Reserved]

§ 1.1849 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1.1850 no qualified handicapped person shall, because the Commission's facilities are inaccessible to or unusable by handicapped persons, 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.

§ 1.1850 Program accessibility: Existing facilities.

(a) *General.* 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 handicapped persons. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by handicapped persons;

(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

(c) Responsibility for implementation and operation of this section shall be vested in the Handicapped Coordinator, Office of Managing Director, Federal Communications Commission.

(d) The Commission shall accept and investigate all complete complaints for which it has jurisdiction. All complete 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.

(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 Architectural and Transportation Barriers Compliance 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), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within one hundred eighty (180) days of the receipt of a complete complaint 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) Timely appeals shall be accepted and processed by the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

(j) The Commission shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the request. If the Commission determines that it needs additional information from the complainant, it 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 paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(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.

§ 1.1871-1.1899 [Reserved]

PART 2--GENERAL RULES AND REGULATIONS

Information on the deleted parts may be obtained through The Federal Communication Commission - 1919 M Street, N. W., Washington, D. C. 20554 - Phone 202-632-7024.

Sec. SUBPART A Deleted- by Broadcast Service Bureau only

 SUBPART B Deleted- by Broadcast Service Bureau only

SUBPART C - EMISSIONS

2.201 Emissions, modulation and transmission characteristics.

2.202 Bandwidths.

 SUBPART D Deleted by Broadcast Service Bureau only

SUBPART E--DISTRESS, DISASTER AND EMERGENCY COMMUNICATIONS

2.401 Distress messages.

2.402 Control of distress traffic.

2.403 Retransmission of distress message.

2.404 Resumption of operation after distress.

2.405 Operation during emergency.

2.406 National defense; free service.

2.407 National defense; emergency authorization.

SUBPART F--EQUIPMENT TYPE APPROVAL AND TYPE ACCEPTANCE

Deleted and Reserved

SUBPART G Deleted

SUBPART H--PROHIBITION AGAINST EAVESDROPPING

2.701 Prohibition against use of a radio device for eavesdropping.

SUBPART I--MARKING OF RADIOFREQUENCY DEVICES

- 2.801 Radiofrequency device defined.
- 2.803 Equipment requiring Commission approval.
- * 2.805 Equipment that does not require Commission approval.
- * 2.807 Statutory exceptions.
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- 2.811 Transmitters operated under Part 73.
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SUBPART J

Equipment Authorization Procedures

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- 2.1204 (Reserved).
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SUBPART L -- REGISTRATION OF TELEPHONE TERMINAL EQUIPMENT

Deleted by Broadcast Service, pretains to Part 68

SUBPART M -- ADVANCE APPROVAL OF SUBSCRIPTION TRANSMISSION SYSTEMS
Advance Approval Procedure

2.1400 Application for Advance Approval under Part 73.

2.201 Emission, modulation and transmission characteristics.

The following system of designating emission, modulation and transmission characteristics shall be employed.

(a) Emissions are designated according to their classification and their necessary bandwidth.

(b) A minimum of three symbols are used to describe the basic characteristics of radio waves. Emissions are classified and symbolized according to the following characteristic:

- (1) First symbol - type of modulation of the main character;
- (2) Second symbol - nature of signal(s) modulating the main carrier;
- (3) Third symbol - type of information to be transmitted.

Note - A fourth and fifth symbol are provided for additional information and are shown in Appendix 6, Part A of ITU Radio Regulations. Use of the fourth and fifth symbol is optional. Therefore, the symbols may be used as described in Appendix 6, but are not required by the Comm.

(c) First Symbol - types of modulation of main carrier;

- (1) Emission of an unmodulated carrier----- N
 - (2) Emission in which the main carrier is amplitude-modulated
(including cases where sub-carriers are angle-modulated);
 - Double-sideband----- A
 - Single-sideband, full carrier----- H
 - Single-sideband, reduced or variable level carrier----- R
 - Single sideband, suppressed carrier----- J
 - Independent sidebands----- B
 - Vestigial sideband----- C
 - (3) Emission in which the main carrier is angle-modulated:
 - Frequency modulation----- F
 - Phase modulation----- G
- Note-Whenever frequency modulation "F" is indicated, Phase modulation "G" is also acceptable
- (4) Emission in which the main carrier is amplitude and angle-modulated either simultaneously or in a pre-established sequence----- D
 - (5) Emission of pulses:
 - Sequence of unmodulated pulses----- P
 - A sequence of pulses:
 - Modulated in amplitude----- K
 - Modulated in width/duration----- L
 - Modulated in position/phase----- M
 - in which the carrier is angled modulated during the period of the pulse----- Q
 - Which is a combination of the foregoing or is produced by other means----- V
 - (6) Cases not covered above, in which an emission consists of the main carrier modulated, either simultaneously or in a pre-established sequence in a combination of two or more of the following modes: amplitude, angle, pulse----- W

(7) Cases not otherwise covered----- N

¹ Emissions where the main carrier is directly modulated by a signal which has been coded into quantized form (e.g. pulse code modulation) should be designated under (2) or (3).

(d) Second Symbol - Nature of signal(s) modulating the main carrier:

- (1) No modulating signal----- 0
- (2) A single channel containing quantized or digital information without the use of a modulating sub-carrier, excluding time-division multiplex----- 1
- (3) A single channel containing quantized or digital information with the use of a modulating sub-carrier time-division multiplex----- 2
- (4) A single channel containing analogue information----- 3
- (5) Two or more channels containing quantized or digital information----- 7
- (6) Two or more channels containing analogue information----- 8
- (7) Composite system with one or more channels containing quantized or digital information, together with one or more channels containing analogue information----- 9
- (8) Cases not otherwise covered----- X

(e) Third symbol - Type of information to be transmitted²:

- (1) No information transmitted----- N
- (2) Telegraphy-for aural reception----- A
- (3) Telegraphy-for automatic reception----- B
- (4) Facsimile----- C
- (5) Data transmission, telemetry, telecommand----- D
- (6) Telephony (including sound broadcasting)----- E
- (7) Television (video)----- F
- (8) Combination of the above----- W
- (9) Cases not covered----- X

(f) Type B emission: As an exception to the above principles, damped waves are symbolized in the Commission's rules and regulations as type B emission. The use of type B emissions is forbidden.

(g) Whenever the full designation of an emission is necessary, the symbol for that emission, as given above, shall be preceded by the necessary bandwidth of the emission as indicated in 2.202(b)(1).

2.202 Bandwidths. (a) Occupied bandwidth: The frequency bandwidth such that, below its lower and above its upper frequency limits, the mean powers radiated are each equal to 0.5 percent of the total mean power radiated by a given emission. In some cases, for example multi-channel frequency-division systems, the percentage of 0.5 percent may lead to difficulties in the practical application of the definitions of occupied and necessary bandwidth; in such cases a different percentage may prove useful.

(b) Necessary bandwidth: For a given class of emission, the minimum value of the occupied bandwidth sufficient to ensure the transmission of information at the rate and with the quality required for the system employed, under specified conditions. Emissions useful for the good functioning of the receiving equipment as, for example, the emission corresponding to the carrier or reduced carrier systems, shall be included in the necessary bandwidth.

(1) The necessary bandwidth shall be expressed by three numerals and one letter. The letter occupies the position of the decimal point and represents the unit of bandwidth. The first character shall be neither zero nor K, M or G.

(2) Necessary bandwidths:

between 0.001 and 999Hz shall be expressed in Hz (letter H);
 between 1.00 and 000kHz shall be expressed in kHz (letter K);
 between 1.00 and 999MHz shall be expressed in MHz (letter M);
 between 1.00 and 999 GHz shall be expressed in GHz (letter G).

(3) Examples:

0.002Hz-H002
 0.1Hz-H100
 25.3Hz-25H3
 400Hz-400H
 2.4kHz-2k40
 6kHz-6K00
 12.5kHz-12K5
 180.4kHz-180K
 180.5kHz-181K
 180.7kHz-181K
 1.25MHz-1M25
 2MHz-2M00
 10MHz-10M0
 202MHz-202M
 5.65GHz-5G65

(c) The necessary bandwidth may be determined by one of the following:

(1) Use of the formulas included in the table, in paragraph (g) of this section, which also gives examples of necessary bandwidths and designations of corresponding emissions;

(2) For frequency modulated radio systems which have a substantially linear relationship between the value of input voltage to the modulator and the resulting frequency deviation of the carrier and which carry either single sideband suppressed carrier frequency division multiplex speech channels or television computation in accordance with provisions of paragraph (f) of this section and formulas and methods indicated in the table, in paragraph (g) of this section;

(3) Computation in accordance with Recommendations of the International Radio Consultative Committee (C.C.I.R.);

(4) Measurement in cases not covered by subparagraphs (1), (2) or (3) of this paragraph.

(d) The value so determined should be used when the full designation of an emission is required. However, the necessary bandwidth so determined is not the only characteristic of an emission to be considered in evaluating the interference that may be caused by that emission.

(e) In the formulation of the table in paragraph (g) of this section, the following terms are employed.

- B_n equals Necessary bandwidth in hertz
- B " Modulation rate in bands
- N " Maximum possible number of black plus white elements to be transmitted per second, in facimile
- M " Maximum modulation frequency in hertz
- C " Sub-carrier frequency in hertz
- D " Peak frequency deviation, i.e., half the difference between the maximum and minimum values of the instantaneous frequency. The instantaneous frequency in hertz is the time rate of change in phase in radians divided by 2
- t " Pulse duration in seconds at half amplitude
- t_r " Pulse rise time in seconds between 10% and 90% of maximum amplitude
- K " An overall numerical factor which varies according to the emission and which depends upon the allowable signal distortion
- N_c " Number of baseband telephone channels in radio systems employing multichannel multiplexing
- P " Continuity pilot sub-carrier frequency (Hz) (continuous signal utilized to verify performance of frequency-division multiplex systems).

(f) Determination of values of D and B_n for systems specified in paragraph (c)(2) of this section:

(1) Determination of D in systems for multichannel telephony;

(i) The rms value of the per-channel deviation for the systems shall be specified. (in the case of systems employing preemphasis or phase modulation, this value of per-channel deviation shall be specified at the characteristic baseband frequency.)

(ii) The value of D is then calculated by multiplying the rms value of the per-channel deviation by the appropriate factors, as follows:

Number of message circuits	Multiplying factors	Limits of X (P_{avr} (dBm0))
More than 3, but less than 12.....
At least 12, but less than 60.....	$3.76 \text{ antilog } (X+2 \log_{10} N_c)$ 20	X: -2 to +2.6.
At least 60, but less than 240.....	$3.76 \text{ antilog } (X+4 \log_{10} N_c)$ 20	X: -5.6 to -1.6.
240 or more.....	$3.76 \text{ antilog } (X+10 \log_{10} N_c)$ 20	X: -19.6 to -15.0.

Where X represents the average power in a message circuit in dBm0; N_c is the number of circuits in the multiplexed message load; 3.76 corresponds to a peak load factor of 11.6 dB.

(2) The necessary bandwidth (B_n) normally is considered to be numerically equal to:

(i) $2M$ plus $2DK$, for systems having no continuity pilot subcarrier or having a continuity pilot subcarrier whose frequency is not the highest modulating the main carrier;

(ii) $2P$ plus $2DK$, for systems having a continuity pilot subcarrier whose frequency exceeds that of any other signal modulating the main carrier, unless the conditions set forth in subparagraph (3) of this paragraph are met.

(3) as an exception to subparagraph (2)(ii) of this paragraph, the necessary bandwidth (B_n) for such systems is numerically equal to $2M$ plus $2DK$, whichever is greater, provided the following conditions are met:

(i) The modulation index of the main carrier due to the continuity pilot subcarrier does not exceed 0.25, and

(ii) In a radio system of multichannel telephony, the rms frequency deviation of the main carrier due to the continuity pilot subcarrier does not exceed 70 percent of the rms value of the per-channel deviation, or, in a radio system for television, the rms deviation of the main carrier due to the pilot does not exceed 3.55 percent of the peak deviation of the main carrier.

(g) Table of necessary bandwidths:

Description of emission	Necessary bandwidth		Designation of emission
	Formula	Sample calculation	
I. NO MODULATING SIGNAL			
Continuous wave emission			NON (zero)
II. AMPLITUDE MODULATION			
1. Signal With Quantized or Digital Information			
Continuous wave telegraphy	$B_n = BK$, K=5 for fading circuits, K=3 for non-fading circuits	25 words per minute; B=20, K=5, Bandwidth: 100 Hz	100HA1A
Telegraphy by on-off keying of a tone modulated carrier	$B_n = BK + 2M$, K=5 for fading circuits, K=3 for non-fading circuits	25 words per minute; B=20, M=1000, K=5, Bandwidth: 2100 Hz=2.1 kHz	2K10A2A
Selective calling signal, single-sideband full carrier	$B_n = M$	Maximum code frequency is: 2110 Hz, M=2110, Bandwidth: 2110 Hz=2.11 kHz	2K11H2B
Direct-printing telegraphy using a frequency shifted modulating sub-carrier single-sideband suppressed carrier	$B_n = 2M + 2DK$, M=B+2	B=50, D=35 Hz (70 Hz shift), K=1.2, Bandwidth: 134 Hz	134HJ2B
Telegraphy, single sideband reduced carrier.	$B_n = \text{central frequency} + M + DK$, M=B+2	15 channels; highest central frequency is: 2885 Hz, B=100, D=42.5 Hz (85 Hz shift), K=0.7 Bandwidth: 2.885 Hz=2.885 kHz	2K88R7B
2. Telephony (Commercial Quality)			
Telephony double-sideband	$B_n = 2M$	M=3000, Bandwidth=6000 Hz=6 kHz	6K00A3E
Telephony, single-sideband, full carrier	$B_n = 2M$	M=3000, Bandwidth: 3000 Hz=3 kHz	3K00H3E

* In this context the word "information" does not include information of a constant, unvarying nature such as is provided by standard frequency emissions, continuous wave and pulse radars, etc.

2

Description of emission	Necessary bandwidth		Designation of emission
	Formula	Sample calculation	
Telephony, single-sideband suppressed carrier	$B_n = M$ - lowest modulation frequency	$M=3000$, lowest modulation frequency is 3000 Hz, 2700 Hz Bandwidth: 2700 Hz = 2.7 kHz	2K70J3E
Telephony with separate frequency modulated signal to control the level of demodulated speech signal, single-sideband, reduced carrier	$B_n = M$	Maximum control frequency is 2990 Hz, $M=2990$, Bandwidth: 2990 Hz = 2.99 kHz	2K99R3E
Telephony with privacy, single-sideband, suppressed carrier (two or more channels)	$B_n = N_s M$ - lowest modulation frequency in the lowest channel	$N_s=2$, $M=3000$ lowest modulation frequency is 250 Hz, Bandwidth: 5750 Hz = 5.75 kHz	5K75J8E
Telephony, independent sideband (two or more channels)	$B_n = \text{sum of } M \text{ for each sideband}$	2 channels, $M=3000$, Bandwidth: 6000 Hz = 6 kHz	6K00B8E
3. Sound Broadcasting			
Sound broadcasting, double-sideband	$B_n = 2M$, M may vary between 4000 and 10000 depending on the quality desired	Speech and music, $M=4000$, Bandwidth: 8000 Hz = 8 kHz	6K00A3E
Sound broadcasting, single-sideband reduced carrier (single channel)	$B_n = M$, M may vary between 4000 and 10000 depending on the quality desired	Speech and music, $M=4000$, Bandwidth: 4000 Hz = 4 kHz	4K00R3E
Sound broadcasting, single-sideband, suppressed carrier	$B_n = M$ - lowest modulation frequency	Speech and music, $M=4500$, lowest modulation frequency = 50 Hz, Bandwidth: 4450 Hz = 4.45 kHz	4K45J3E
4. Television			
Television, vision and sound	Refer to CCIR documents for the bandwidths of the commonly used television systems	Number of lines = 525; Nominal video bandwidth: 4.2 MHz, Sound carrier relative to video carrier = 4.5 MHz Total vision bandwidth: 5.75 MHz; FM aural bandwidth including guardbands: 250,000 Hz Total bandwidth: 6 MHz	5M75C3F 250KF3E 6M25C3F
5. Facsimile			
Analogue facsimile by sub-carrier frequency modulation of a single-sideband emission with reduced carrier	$B_n = C - N + 2 + DK$, $K=1.1$ (typically)	$N=1100$, corresponding to an index of cooperation of 352 and a cyclo rotation speed of 60 rpm. Index of cooperation is the product of the drum diameter and number of lines per unit length $C=1800$, $D=400$ Hz, Bandwidth = 2.890 Hz = 2.89 kHz	2K89R3C
Analogue facsimile; frequency modulation of an audio frequency sub-carrier which modulates the main carrier, single-sideband suppressed carrier	$B_n = 2M + 2DK$, $M=N/s$, $K=1.1$ (typically)	$N=1100$, $D=400$ Hz, Bandwidth: 1980 Hz = 1.98 kHz	1K98J3C
6. Composite Emissions			
Double-sideband, television relay	$B_n = 2C + 2M + 2D$	Video limited to 5 MHz, audio on 6.5 MHz frequency modulated subcarrier deviation = 50 kHz; $C=6.5 \times 10^3$, $D=50 \times 10^3$ Hz, $M=15,000$, Bandwidth: 13.13×10^3 Hz = 13.13 MHz	13M2A6W
Double-sideband radio relay system	$B_n = 2M$	10 voice channels occupying baseband between 1 kHz and 164 kHz; $M=164,000$ bandwidth = 328,000 Hz = 328 kHz	328KA8E
Double-sideband emission of VOR with voice (VOR = VHF omnidirectional radio range)	$B_n = 2C_{max} + 2M + 2DK$, $K=1$ (typically)	The main carrier is modulated by: - a 30 Hz sub-carrier - a carrier resulting from a 9960 Hz tone frequency modulated by a 30 Hz tone - a telephone channel - a 1020 Hz keyed tone for continual Morse identification. $C_{max}=9960$, $M=30$, $D=480$ Hz, Bandwidth: 20,940 Hz = 20.94 kHz	20K9A9W
Independent sidebands; several telegraph channels together with several telephone channels	$B_n = \text{sum of } M \text{ for each sideband}$	Normally composite systems are operated in accordance with standardized channel arrangements, (e.g. CCIR Rec. 348-2) 3 telephone channels and 15 telegraphy channels require the bandwidth 12,000 Hz = 12 kHz	12K0B9W
III-A. FREQUENCY MODULATION			
1. Signal With Quantized or Digital Information			
Telegraphy without error-correction (single channel)	$B_n = 2M + 2DK$, $M=B+2$, $K=1.2$ (typically)	$B=100$, $D=85$ Hz (170 Hz shift), Bandwidth: 304 Hz	304HF1B
Four-frequency duplex telegraphy	$B_n = 2M + 2DK$, $B = \text{Modulation rate in bands of the faster channel. If the channels are synchronized: } M=B+2$, otherwise $M=2B$, $K=1.1$ (typically)	Spacing between adjacent frequencies = 400 Hz; Synchronized channels; $B=100$, $M=50$, $D=600$ Hz, Bandwidth: 1420 Hz = 1.42 kHz	1K42F7B
2. Telephony (Commercial Quality)			
Commercial telephony	$B_n = 2M + 2DK$, $K=1$ (typically, but under conditions a higher value may be necessary)	For an average case of commercial telephony, $M=3,000$, Bandwidth: 18,000 Hz = 18 kHz	18K0F3E
3. Sound Broadcasting			
Sound broadcasting	$B_n = 2M + 2DK$, $K=1$ (typically)	Monaural, $D=75,000$ Hz, $M=15,000$, Bandwidth: 18,000 Hz = 18 kHz	18K0F3E

SUBPART E—DISTRESS, DISASTER, AND EMERGENCY COMMUNICATIONS

§ 2.401 Distress messages.

Each station licensee shall give absolute priority to radiocommunications or signals relating to ships or aircraft in distress; shall cease all sending on frequencies which will interfere with hearing a radiocommunication or signal of distress and except when engaged in answering or aiding the ship or aircraft in distress, shall refrain from sending any radiocommunications or signals until there is assurance that no interference will be caused with the radiocommunications or signals relating thereto; and shall assist the ship or aircraft in distress, so far as possible, by complying with its instructions.

§ 2.402 Control of distress traffic.

The control of distress traffic is the responsibility of the mobile station in distress or of the mobile station which, by the application of the provisions of § 2.403, has sent the distress call. These stations may, however, delegate the control of the distress traffic to another station.

§ 2.403 Retransmission of distress message.

Any station which becomes aware that a mobile station is in distress may transmit the distress message in the following cases:

(a) When the station in distress is not itself in a position to transmit the message.

(b) In the case of mobile stations, when the master or the person in charge of the ship, aircraft, or other vehicles carrying the station which intervenes believes that further help is necessary.

(c) In the case of other stations, when directed to do so by the station in control of distress traffic or when it has reason to believe that a distress call which it has intercepted has not been received by any station in a position to render aid.

§ 2.404 Resumption of operation after distress.

No station having been notified to cease operation shall resume operation on frequency or frequencies which may cause interference until notified by the station issuing the original notice that the station involved will not interfere with distress traffic as it is then being routed or until the receipt of a general notice that the need for handling distress traffic no longer exists.

§ 2.405 Operation during emergency.

The licensee of any station (except amateur, standard broadcast, FM broadcast, noncommercial educational FM broadcast, or television broadcast) may, during a period of emergency in which normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, utilize such station for emergency communication service in communicating in a manner other than that specified in the instrument of authorization: *Provided:* (a) That as soon as possible after the beginning of such emer-

gency use, notice be sent to the Commission at Washington, D.C., and to the Engineer in Charge of the district in which the station is located, stating the nature of the emergency and the use to which the station is being put, and (b) That the emergency use of the station shall be discontinued as soon as substantially normal communication facilities are again available, and (c) That the Commission at Washington, D.C., and the Engineer in Charge shall be notified immediately when such special use of the station is terminated: *Provided further,* (d) That in no event shall any station engage in emergency transmission on frequencies other than, or with power in excess of, that specified in the instrument of authorization or as otherwise expressly provided by the Commission, or by law: *And provided further,* (e) That any such emergency communication undertaken under this section shall terminate upon order of the Commission.

NOTE: Part 73 of this chapter contains provisions governing emergency operation of standard, FM, noncommercial educational FM, and television broadcast stations. Part 97 of this chapter contains such provisions for amateur stations.

§ 2.406 National defense; free service.

Any common carrier subject to the Communications Act may render to any agency of the United States Government free service in connection with the preparation for the national defense. Every such carrier rendering any such free service shall make and file, in duplicate, with the Commission, on or before the 31st day of July and on or before the 31st day of January in each year, reports covering the periods of 6 months ending on the 30th day of June and the 31st day of December, respectively, next prior to said dates. These reports shall show the names of the agencies to which free service was rendered pursuant to this rule, the general character of the communications handled for each agency, and the charges in dollars which would have accrued to the carrier for such service rendered to each agency if charges for all such communications had been collected at the published tariff rates.

§ 2.407 National defense; emergency authorization.

The Federal Communications Commission may authorize the licensee of any radio station during a period of national emergency to operate its facilities upon such frequencies, with such power and points of communication, and in such a manner beyond that specified in the station license as may be requested by the Army, Navy, or Air Force.

SUBPART F—EQUIPMENT TYPE APPROVAL AND TYPE ACCEPTANCE

GENERAL

Deleted and Reserved

SUBPART H PROHIBITION AGAINST EAVESDROPPING

2.701 Prohibition against use of a radio device for eavesdropping. (a) No person shall use, either directly or indirectly, a device required to be licensed by section 301 of the Communications Act of 1934, as amended, for the purpose of overhearing or recording the private conversations of others unless such use is authorized by all of the parties engaging in the conversation.

(b) Paragraph (a) of this section shall not apply to operations of any law enforcement officers conducted under lawful authority.

Subpart I - Marketing of Radiofrequency Devices

2.801 Radiofrequency device defined. As used in this part, a radiofrequency device is any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means. Radiofrequency devices include, but are not limited to

(a) The various types of radio communication transmitting devices described throughout this chapter.

(b) The incidental and restricted radiation devices described in Part 15 of this chapter.

(c) The industrial, scientific, and medical equipment described in Part 18 of this chapter.

(d) Any part or component thereof which in use emits radiofrequency energy by radiation, conduction, or other means.

2.803 Equipment requiring Commission approval. In the case of a radiofrequency device, which, in accordance with the rules in this chapter must be type approved, type accepted, or certificated prior to use, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purposes of selling or leasing or offering for sale or lease, any such radiofrequency device, unless, prior thereto, such device shall have been type approved, type accepted, certificated or notified as the case may be. PROVIDED, HOWEVER, that the advertising or display of a device, which has not been granted type approval, type acceptance, certification or notification, will not be deemed to be an offer for sale if such advertising contains, and the display is accompanied by, conspicuous notice worded as follows:

This device has not been approved by the Federal Communications Commission. This device is not, and may not be offered for sale or lease, or sold or leased until the approval of the FCC has been obtained.

This provision does not apply to radio frequency devices that could not be granted an equipment authorization or be legally operated under our current rules. Such devices shall not be advertised or displayed or offered for sale or lease or sold or leased.

PROVIDED, FURTHER, That any non-approved device displayed under the terms of the above proviso may not be activated or operated.

2.805 Equipment that does not require Commission approval. In the case of a radiofrequency device, which, in accordance with the rules in this chapter must comply with specified technical standards prior to use, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purposes of selling or leasing or offering for sale or lease, any such radiofrequency device, unless prior thereto such device complies with the applicable technical standards specified in the Commission's rules.

2.806 Exemption for a computing device. (a) Notwithstanding the provisions of 2.805, the announcement and offer for sale of a computing device subject to the provisions in Part 15 of this Chapter which is in the conceptual developmental, design or preproduction stage is permitted prior to verification of compliance, provided the prospective buyer is advised in writing at the time of announcement or offer for sale that said equipment is subject to FCC Rules and that said equipment shall comply with the appropriate FCC Rules prior to final delivery to the buyer or to the centers of distribution.

(b) Manufacturers of Class A computing devices as defined in Part 15 of this Chapter shall have the option of insuring compliance with applicable technical specifications of this Chapter at each end user's location after installation, provided that the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the responsibility of the manufacturer of the equipment.

(c) Until compliance has been determined, a computing device subject to provisions in Part 15 of the Chapter may be activated or operated only for the purpose of compliance testing.

2.807 Statutory exceptions. As provided by section 302(c) of the Communications Act of 1934, as amended, 2.803 and 2.805 shall not be applicable to:

(a) Carrier transporting radiofrequency devices without trading in them.

(b) Radiofrequency devices manufactured solely for export.

(c) The manufacture, assembly, or installation of radiofrequency devices for its own use by a public utility engaged in providing electric service: Provided, however, that no such device shall be operated if it causes harmful interference to radio communications.

(d) Radiofrequency devices for use by the Government of the United States or any agency thereof: Provided, however, That this exception shall not be applicable to any device after it has been disposed of by such Government or agency.

2.809 Exception for ISM equipment. (a) The announcement and offer for sale of ISM equipment which is subject to the provisions of Part 18 of this chapter, and which is in the conceptual developmental design or pre-production stage is permitted prior to determination of compliance, provided the prospective buyer is advised in writing at the time of the announcement or offer for sale that said equipment is subject to FCC Rules and that said equipment shall comply with the appropriate FCC Rules prior to final delivery to the buyer or to the distribution centers.

(b) Manufactures of nonconsumer ISM equipment shall have the option of insuring compliance with applicable technical specifications of this chapter at each end user's location after installation, provided the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the responsibility of the manufacturer of the equipment.

(c) ISM equipment subject to the provisions of this chapter may be operated prior to determination of compliance and, when appropriate, obtaining authorization from the Commission under the following circumstances:

(1) While testing for purposes of determining equipment compliance.

(2) When demonstrating equipment at trade shows, provided a conspicuous notice is displayed to specify that the device has not been tested for compliance or approved by the Commission. If the device is offered for sale or lease, the provisions of 2.809(a) shall apply.

(3) While testing at customer's premises to determine equipment acceptability.

2.811 Transmitters operated under Part 73. Sections 2.803 and 2.805 shall not be applicable to a transmitter operated in any of the Radio Broadcast Services regulated under Part 73 of this chapter, provided the conditions set out in Part 73 of this chapter for the acceptability of such transmitter for use under licensing are met.

2.813 Transmitters operated in the Instructional Television Fixed Service. Sections 2.803 and 2.805 shall not be applicable to a transmitter operated in the Instructional Television Fixed Service regulated under Part 74 of this chapter provided the conditions in 74.952 of this chapter for the acceptability of such transmitter for licensing are met.

2.815 External radio frequency power amplifiers. (a) As used in this Part, an external radio frequency power amplifier is any device which, (1) when used in conjunction with a radio transmitter as a signal source is capable of amplification of that signal, and (2) is not an integral part of a radio transmitter as manufactured.

(b) After April 27, 1978, no person shall manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any external radio frequency power amplifier or amplifier kit capable of operation on any frequency or frequencies between 24 and 35 MHz.

NOTE: For purposes of this part, the amplifier will be deemed incapable of operation between 24 and 35 MHz if --

(1) The amplifier has no more than 6 decibels of gain between 24 and 26 MHz and between 28 and 35 MHz. (This gain is determined by the ratio of the input RF driving signal (mean power measurement) to the mean RF output power of the amplifier.); and

(2) The amplifier exhibits no amplification (0 decibels of gain) between 26 and 28 MHz.

(c) No person shall manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any external radio frequency power amplifier or amplifier kit capable of operation on any frequency or frequencies below 144 MHz unless the amplifier has received a grant of type acceptance in accordance with Subpart J of this Part and Subpart C of Part 97 or other relevant Parts of this Chapter. No more than 10 external radio frequency power amplifiers or amplifier kits may be constructed for evaluation purposes in preparation for the submission of an application for a grant of type acceptance.

NOTE: For the purposes of this part, an amplifier will be deemed incapable of operation below 144 MHz if the amplifier is not capable of being easily modified to increase its amplification characteristics below 120 MHz, and either:

(1) The mean output power of the amplifier decreases, as frequency decreases from 144 MHz, to a point where 0 decibels or less gain is exhibited at 120 MHz and below 120 MHz; or

(2) The amplifier is not capable of even short periods of operation below 120 MHz without sustaining permanent damage to its amplification circuitry.

(d) The proscription in Paragraph (b) of this section shall not apply to the marketing, as defined in that paragraph, by a licensed amateur radio operator to another licensed amateur radio operator of an external radio frequency power amplifier fabricated in not more than one unit of the same model in a calendar year by that operator provided the amplifier is for the amateur operator's personal use at his licensed amateur radio station and the requirements of Sections 97.75 and 97.76 of this chapter are met.

(e) The proscription in Paragraph (c) of this section shall not apply in the marketing, as defined in that paragraph, by a licensed amateur radio operator to another licensed amateur radio operator of an external radio frequency power amplifier if the amplifier is for the amateur operator's personal use at his licensed amateur radio station and the requirements of Sections 97.75 and 97.76 of this chapter are met.

SUBPART J

General Provisions

2.901 Basis and purpose. (a) In order to carry out its responsibilities under the Communications Act and the various treaties and international regulations, and in order to promote efficient use of the radio spectrum, the Commission has developed technical standards for radio frequency equipment and parts or components thereof. The technical standards applicable to individual types of equipment are found in that part of the rules governing the service wherein the equipment is to be operated. In addition to the technical standards provided, the rules governing the service may require that such equipment be verified by the manufacturer or importer, or that such equipment receive equipment authorization from the Commission by one of the following procedures: Type approval, type acceptance, certification, registration or notification.

(b) The following sections describe the verification procedure and the procedures to be followed in obtaining type approval, type acceptance, certification or notification from the Commission and the conditions attendant to such a grant.

2.902 Verification. (a) Verification is a procedure where the manufacturer makes measurements or takes the necessary steps to insure that the equipment complies with the appropriate technical standards. Submittal of a sample unit or representative data to the Commission demonstrating compliance is not required unless specifically requested by the Commission pursuant to 2.957, of this part.

§2.903 Type approval. (a) Type approval is an equipment authorization issued by the Commission based on examination and measurement of one or more sample units by the Commission at its laboratory.

(b) Type approval attaches to all units subsequently marketed by the grantee which are identical (see 2.908) in all respects to the sample tested by the Commission or include only changes authorized by the Commission pursuant to 2.967.

2.904 Notification. (a) Notification is an equipment authorization issued by the Commission whereby the applicant makes measurements to determine that the equipment complies with the appropriate technical standards and reports that such measurements have been made and demonstrate the necessary compliance. Submittal of a sample unit or representative data to the Commission demonstrating compliance is not required unless specifically requested by the Commission pursuant to 2.936, 2.943 or 2.945.

(b) Permissive changes or other variations authorized by the Commission to equipment under the notification procedure shall be made in accordance with the restrictions contained in 2.977.

(c) For equipment which requires a grant of notification, authorization under type acceptance, type approval or certification shall be deemed to constitute authorization of the equipment under notification.

§2.905 Type acceptance. (a) Type acceptance is an equipment authorization issued by the Commission for equipment to be used pursuant to a station authorization. Type acceptance is based on representations and test data submitted by the applicant.

(b) Type acceptance attaches to all units marketed by the grantee which are identical (See 2.908) to the sample tested except for permissive changes or other variations authorized by the Commission pursuant to 2.1001.

§2.907 Certification. (a) Certification is an equipment authorization issued by the Commission for equipment designed to be operated without individual license under Parts 15 and 18 of its rules, based on representations and test data submitted by the applicant.

(b) Certification attaches to units subsequently marketed by the grantee which are identical (See 2.908) to the sample tested except for permissive changes or other variations authorized by the Commission pursuant to 2.1043.

2.908 Identical defined. As used in this subpart, the term identical means identical within the variation that can be expected to arise as a result of quantity production techniques.

Application Procedures for Equipment Authorization

§2.909 Written application required. (a) An application for equipment authorization shall be filed on a form prescribed by the Commission.

(b) Each application shall be accompanied by all information required by this Subpart and those Parts of the rules governing operation of the equipment, and by requisite test data, diagrams, etc., as specified in this Subpart and in those sections of rules whereunder the equipment is to be operated.

(c) Each application including amendments thereto, and related statements of fact required by the Commission, shall be personally signed by the applicant if the applicant is an individual; by one of the partners if the applicant is a partnership; by an officer, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association: Provided, however, That the application may be signed by the applicant's authorized representative who shall indicate his title, such as plant manager, project engineer, etc.

(d) Technical test data shall be signed by the person who performed or supervised the tests. The person signing the test data shall attest to the accuracy of such data. The Commission may require such person to submit a statement showing that he is qualified to make or supervise the required measurements.

(e) The signatures of the applicant and the person certifying the test data shall be made personally by those persons on the original application; copies of such documents may be conformed. Signatures and certifications need not be made under oath.

2.911, 2.12 and 2.913 Deleted.

§2.915 Grant of application. (a) The Commission will grant an application for type approval, type acceptance, certification or notification if it finds from an examination of the application and supporting data, or other matter which it may officially notice, that:

(1) The equipment is capable of complying with pertinent technical standards of the rule part (s) under which it is to be operated; and,

(2) Grants of the application would serve the public interest, convenience and necessity.

(b) Grants will be made in writing showing the effective date of the grant and any specific condition(s) attaching to the grant.

(c) Neither type approval, type acceptance, certification or notification shall attach to any equipment, nor shall any equipment be deemed effective, until the application has been granted.

§2.917 Dismissal of application. (a) An application which is not in accordance with the provisions of this Subpart may be dismissed.

(b) Any application, upon written request signed by the applicant or his attorney, may be dismissed prior to a determination granting or denying the authorization requested.

(c) If an applicant is requested by the Commission to file additional documents or information and fails to submit the requested material within 60 days, the application may be dismissed.

(d) An application for type approval which has been accepted by the Commission in which the equipment required to be tested is not received by the Commission's Laboratory within six month following the date of the application, may be dismissed.

§2.919 Denial of application. If the Commission is unable to make the findings specified in 2.915(a), it will deny the application. Notification to the applicant will include a statement of the reasons for the denial.

§2.921 Hearing on application. Whenever it is determined that an application for equipment authorization presents substantial factual questions relating to the qualifications of the applicant or the equipment (or the effects of the use thereof), the Commission may designate the application for hearing. A hearing on an application for an equipment authorization shall be conducted in the same manner as a hearing on a radio station application as set out in Subpart B of Part 1 of this chapter.

§2.923 Petition for reconsideration; application for review. Persons aggrieved by virtue of an equipment authorization action may file with the Commission a petition for reconsideration or an application for review. Rules governing the filing of petitions for reconsideration and applications for review are set forth in 1.106 and 1.115, respectively, of this chapter.

§2.925 Identification of equipment. (a) Each equipment for which an authorization application is filed on or after October 27, 1980, shall bear a nameplate or label carrying the FCC Identifier assigned by the Commission pursuant to §2.926 and the grantee or grantee/trade name specified in the application for equipment authorization. In the case of an equipment of foreign origin, the country of origin (as required by 19 U.S.C. 1304) shall also be stated on the nameplate or label. Additional information may be inscribed on the nameplate or label at the option of the grantee providing that this additional information cannot be confused with the FCC Identifier. No equipment may bear more than one trade name.

(1) The grantee must display on the nameplate or label either his name or a trade name (or both of these if he prefers). His application for equipment authorization should state which of these he proposes to use for the equipment.

(2) As used in this part, the term "manufacturer" applies only to the party listed by the grantee as the manufacturer. Names of producers of subassemblies or components used by this manufacturer in production of the equipment are not required to be included in identification of the equipment.

(b) The FCC Identifier for an equipment shall consist of the three elements described in §2.926, displayed on one line of the nameplate or label. In each instance where the FCC Identifier is displayed in the nameplate or label, it shall be preceded by the term: "FCC ID:" in capital letters on the same line. If the grantee requests the Commission to assign a single FCC Identifier to a device, where the device is subject to more than one equipment authorization procedure, the above requirement applies. If the grantee requests the Commission to assign a separate FCC Identifier to each section of a device, such as a transceiver or transmitter-receiver, subject to more than one equipment authorization procedure, each FCC Identifier shall be displayed on a separate line of the nameplate or label and preceded by the terms: "TX FCC ID:" or "RX FCC ID:" as appropriate. For a transceiver or transmitter-receiver combination having separate identifiers for the transmitter and the receiver sections, the FCC Identifier for the transmitter section shall be listed on the top line of the identifier portion of the nameplate or label, the FCC Identifier for the receiver section shall be listed on the second line, and any FCC Identifiers for other sections shall be listed on the third and following lines. For imported devices, the country of origin shall be listed on the last line of the identification portion of the nameplate. The identification portion of the nameplate shall be enclosed in an area circumscribed by a line to distinguish it from any additional information placed on the nameplate. Devices other than transceivers or transmitter-receiver combinations having more than one FCC Identifier may have these listed in any order, but on separate lines, starting at the top of the identification portion of the nameplate.

(1) Where a device, such as a transceiver, consists of two or more sections constructed in a common enclosure and on a common chassis or circuit board and/or with common frequency controlling circuits, such equipment shall be listed under a single identifier.

(2) Where a device, such as a transceiver, consists of two or more sections, assembled in a common enclosure but constructed on separate subunits or circuit boards and with independent frequency-controlling circuits, such equipment may be listed with separate FCC Identifiers for the several sections.

(3) In the case of equipment which combines the functions of a registered telephone equipment and some other kind of equipment subject to equipment authorization requirements in a single unit under a single identification, the Registration Number issued pursuant to Part 68 of this chapter will serve as the FCC Identifier for the equipment. Where a registered telephone equipment and some other kind of equipment subject to equipment authorization requirements are constructed separately but are interconnected or used together and are provided with separate nameplates, the registered telephone equipment will be assigned a FCC Registration Number and the other section(s) will be assigned FCC Identifier(s).

(4) Applications filed on or after October 27, 1980, and applications filed earlier requesting assignment of an FCC Identifier pursuant to §2.925(c) will receive a review by the Commission's Laboratory Division with respect to nameplate design within 30 days after receipt at the Laboratory. Failure by the Laboratory to reject a nameplate design proposed in any particular application within this time period will constitute de-facto acceptance of the name plate design for that particular equipment. Such de-facto acceptance will be limited to the equipment covered by the particular application and will not be considered to establish a precedent for other applications. This review deadline applies only to the proposed nameplate design, not to the remainder of the application.

(c) Notwithstanding the provisions of paragraph (g) of this section, the FCC Identifier may be used earlier than October 27, 1980 at the option of the grantee for any equipment covered by an authorization application submitted after April 25, 1979, and for which the grantee requested in his application assignment of an FCC Identifier.

(d) The nameplate or label shall be permanently affixed to the equipment and shall be readily visible to the purchaser at the time of purchase.

(1) As used here, "permanently affixed" means that the required nameplate data is etched, engraved, stamped, indelibly printed, or otherwise permanently marked on a permanently attached part of the equipment enclosure. Alternatively, the required information may be permanently marked on a nameplate of metal, plastic, or other material fastened to the equipment enclosure by welding, riveting, etc., or with a permanent adhesive. Such a nameplate must be able to last the expected lifetime of the equipment in the environment in which the equipment will be operated and must not be readily detachable.

(2) As used here, "readily visible" means that the nameplate or nameplate data must be visible from the outside of the equipment enclosure. It is preferable that it be visible at all times during normal installation or use, but this is not a prerequisite for grant of equipment authorization.

(e) Where it is shown that a permanently affixed nameplate is not desirable or is not feasible, an alternative method of positively identifying the equipment may be used if approved by the Commission. The proposed alternative method of identification and the justification for its use must be included with the application for equipment authorization.

NOTE -- As an example, a device intended to be implanted within the body of a test animal or person would probably require an alternate method of identification.

(f) The term: "FCC ID:" and the coded identification assigned by the Commission shall be in a size of type large enough to be readily legible, consistent with the dimensions of the equipment and its nameplate. However, the type size for the FCC Identifier is not required to be larger than eight-point.

(g) Unless assigned an FCC Identifier pursuant to §2.925(c), each equipment for which an authorization application filed before October 27, 1980, shall be uniquely identified with a name and type or model number inscribed on a nameplate or label. The detailed information to be inscribed on the nameplate or label is set out in the rules for the particular form of equipment authorization required and, for some kinds of equipment, in the rules governing the specific category of device. The type or model number required for equipment subject to this paragraph shall comply with the following requirements:

(1) The type or model number shall consist of a series of Arabic numerals or capital letters or a combination thereof, and may include punctuation marks and spaces. The total of Arabic numerals, capital letters, punctuation marks and spaces in any assigned type or model number shall not exceed 17;

(2) The type or model number will be specified in the grant of equipment authorization and will be identical to that assigned by the manufacturer or applicant and given in the application for equipment authorization;

(3) The type or model number shall be one which has not been used previously in conjunction with the same name that will be on the equipment.

§2.926 FCC identifier. (a) When a grant of equipment authorization is issued, it will carry an FCC Identifier assigned by the Commission to identify the particular equipment covered by such grant. This identifier will consist of three elements:

- (1) Grantee or grantee/trade name code pursuant to paragraph (b) of this section.
- (2) Manufacturer code pursuant to paragraph (c) of this section.
- (3) Number assigned by grantee pursuant to paragraph (d) of this section.

EXAMPLE: XXXYYY1234A
 XXX . . . Grantee or grantee/trade name code.
 YYY . . . Manufacturer code.
 1234A . . Product identification assigned by grantee.

NOTE: The term "grantee/trade name code" refers to a code assigned to represent a specific grantee. In instances where different grantees propose use of the identical trade name, different grantee/trade name codes will be assigned.

(b) Grantee or grantee/trade name code will consist of three characters; Arabic numerals, capital letters, or a combination thereof. The lists of these codes will not be reproduced for public distribution. They will, however, be made available for official use by FCC and U.S. Customs Staffs. A prospective grantee may request the assignment of a code at any time. If not requested in advance, a code will be assigned at the time the grant of equipment authorization is issued. A grantee proposing to sell equipment under two or more trade names must request a separate code for each trade name.

(1) After assignment, each grantee will continue to use the same code for subsequent equipment authorization applications. In the event that the grantee name is changed, or ownership is transferred, the circumstances should be reported to the Commission so that a new code can be assigned if appropriate. Such code reassignment will require reissue of any grants of equipment authorization that may be involved. See §§2.934 and 2.935 for additional information.

(c) Manufacturer code will consist of three characters: Arabic numerals, capital letters, or a combination thereof. The lists of these codes will not be reproduced for public distribution. They will, however, be made available for official use by FCC and U.S. Customs staffs. A manufacturer (or a grantee who proposes to use his services) may request assignment of a code at any time. If not requested in advance, a code will be assigned at the time the grant of equipment authorization is issued.

(1) After assignment of a code to a manufacturer, that party will continue to use the same code for all subsequent equipment applications, whether with the same grantee or another. In the event that the manufacturer name is changed, or ownership is transferred, the circumstances should be reported to the Commission so that a new code can be assigned, if appropriate. This notification should be routed via the grantee(s) involved, since such code reassignment will require reissue of all grants of equipment authorization involved. See §§2.934 and 2.935 for additional information.

(2) Where a grantee lists two or more parties as manufacturers of a given model of equipment, a code will be assigned for each manufacturer. The FCC Identifier for any such equipment made by one of the manufacturers will consist of the grantee code, followed by the code assigned to that manufacturer, and this followed by the number assigned by the grantee to the equipment. The grant of equipment authorization issued for the equipment will list all manufacturers and the respective FCC Identifiers for the equipment.

(d) The number assigned by the grantee shall consist of a series of Arabic numerals, capital letters, or a combination thereof. Standard punctuation marks and spaces also may be employed. The total of numerals, letters, punctuation marks, and spaces (within the number itself) shall not exceed 11. The number assigned to the equipment shall be one which has not been used previously in conjunction with the same grantee, grantee/trade name, or manufacturer.

(e) No FCC Identifier may be used on equipment to be marketed unless that specific identifier shall have been validated by a grant of equipment authorization issued by the Commission. The FCC Identifier is uniquely assigned to the grantee and may not be placed on the equipment without authorization by the grantee. See §2.803 for conditions applicable to display at trade shows of equipment which has not been granted equipment authorization where such grant is required prior to marketing. Labelling of such equipment may include model or type numbers, but shall not include a purported FCC Identifier.

Conditions Attendant to a Grant of an Equipment Authorization

§2.927 Limitations on grants. (a) A grant of an equipment authorization is effective until revoked or withdrawn, recinded, surrendered, or a termination date is otherwise established by the Commission.

(b) A grant of an equipment authorization signifies that the Commission has determined that the equipment has been shown to be capable of compliance with the applicable technical standards if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. The issuance of an equipment authorization should not be construed as a finding by the Commission with respect to matters not encompassed by the Commission's rules.

(c) No person shall, in any advertising matter, brochure, etc., use or make reference to an equipment authorization in a deceptive or misleading manner or convey the impression that such equipment authorization reflects more than a Commission determination that the device or product has been shown to be capable of compliance with the applicable technical standards of the Commission's rules.

(d) The issuance of an equipment authorization for a wireless microphone reflects no more than a Commission determination that the device has been shown to be capable of compliance with the applicable technical standards of the Commission's Rules and should not be construed as a finding by the Commission as to matters not encompassed by the rules, especially with respect to compliance with 18 U.S.C. 2512.

§2.929 Nonassignability of an equipment authorization. (a) An equipment authorization issued by the Commission may not be assigned, exchanged or any other way transferred to a second party.

(b) The grantee of an equipment authorization may license or otherwise authorize a second party to manufacture or market the equipment covered by the grant of the equipment authorization provided:

(1) The equipment manufactured by such second party bears the identical name and number as is set out in the grant of the equipment authorization.

NOTE: Any change in the name or number desired as a result of such production or marketing agreement will require the filing of a new application for an equipment authorization as specified in 2.933.

(2) The grantee of the equipment authorization shall continue to be responsible to the Commission for the equipment produced pursuant to such an agreement.

(3) Notice that such a licensing agreement has been entered in shall be provided to the Commission within 30 days after the execution of the agreement. The notice shall indicate with specificity the equipment involved, the date of application and date of grant of the equipment authorization, and shall indicate the provisions that the grantee has made to insure that equipment manufactured by such licensee will continue to comply with the Commission's regulations. The Commission may require the submission of additional information (new measurement data, etc.) depending on the circumstances in the particular case.

§2.931 Responsibility of the grantee. (a) In accepting a grant of an equipment authorization the grantee warrants that each unit of equipment marketed under such grant and bearing the name and type or model number specified in the grant will conform to the unit that was measured and that the data (design and rated operational characteristics) determined by the grantee for notification,

filed with the application for type acceptance or certification, or measured by the Commission in the case of type approved equipment, continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis.

§2.932 Modification of equipment. (a) A new application for an equipment authorization shall be filed whenever there is a change in the design, circuitry or construction of an equipment or device for which an equipment authorization has been issued, except as provided in paragraphs (b), (c), (d) and (e) of this section.

(b) Permissive changes may be made in a type accepted equipment pursuant to 2.1001.

(c) Permissive changes may be made in a certificated equipment pursuant to 2.1043.

(d) For changes in type approved equipment the procedure in 2.967 shall apply.

(e) Permissive changes may be made in notified equipment pursuant to 2.977.

§2.933 Change in identification of equipment. (a) A new application for an equipment authorization shall be filed whenever there is a change in the identification of the equipment with or without a change in design, circuitry or construction. However, for electrically identical equipment, a change in type or model number will not be considered to be a change in identification, and will not require a new application for equipment authorization.

(b) An application filed pursuant to paragraph (a) of this section, where no change in design, circuitry or construction is involved, need not be accompanied by a resubmission of equipment or measurement or test data customarily required with a new application, unless specifically required by the Commission. In lieu thereof, the applicant shall attach a statement setting out:

(1) The original identification used on the equipment prior to the change in identification.

(2) The date of the original grant of the equipment authorization.

(3) The original type approval number assigned by the Commission, if one was assigned.

(4) How the equipment bearing the modified identification differs from the original equipment.

(5) Whether the data previously filed with the Commission (or measured by the Commission in the case of type approved equipment or measured by the applicant in the case of notified equipment) continues to be representative of and applicable to the equipment bearing the identification.

(6) In the case of type accepted equipment, the photographs required by 2.983(f).

(7) In the case of certificated equipment, the photographs required by 2.1033(c).

(c) If the change in identification also involves a change in design or circuitry which falls outside the purview of a permissive change described in 2.977, 2.1001 or 2.1043, a complete application shall be filed pursuant to 2.909.

§2.934 Change in name of grantee. Whenever there is a change in the name of the grantee of an equipment authorization, notice of such change must be received by the Commission not later than 60 days after the grantee starts using the new name.

§2.935 Change in control of grantee. In the case of a transfer of control of the grantee of an equipment authorization, as in the case of sale or merger of the grantee, notice of such transfer must be received by the Commission not later than 60 days subsequent to the consummation of the agreement effecting the transfer of control. Depending on the circumstances in each case, the Commission may require new applications for equipment authorization for each device or equipment held by the predecessor in interest, production of which will be continued by the acquiring party.

§2.936 FCC inspection. Each grantee of an equipment authorization shall upon reasonable request, submit the following to the Commission or shall make the following available for inspection:

(a) The device or equipment covered by the grant of equipment authorization.

(b) The record of design drawings and specifications required by 2.938(a).

(c) The record of the procedures used for production inspection and testing required by 2.938(a)(2)

(d) The manufacturing plant and facilities.

§2.937 Equipment defect and/or design change. When a complaint is filed with the Commission concerning the failure of equipment marketed under an equipment authorization to comply with pertinent requirements of the Commission's rules, and the Commission determines that the complaint is justified and arises out of an equipment fault attributable to the grantee, the Commission may require the grantee to investigate such complaint and report the results of such investigation to the Commission. The report shall also indicate what action if any has been taken or is proposed to be taken by the grantee to correct the defect, both in terms of future production and with reference to articles in the possession of users, sellers and distributors.

2.938 Retention of Records. (a) For each equipment for which an equipment authorization has been issued, the grantee shall maintain the records listed below:

(1) Record of the original design drawings and specifications and all changes that have been made that may affect compliance with the requirements of 2.931.

(2) A record of the procedures used for production inspection and testing to insure the conformance required by 2.931.

(3) For equipment covered under the notification procedure, a record of the test results that demonstrate compliance with appropriate regulations.

(b) The provisions of paragraph (a) of this section shall also apply to a manufacturer of equipment produced under an FCC equipment authorization pursuant to a license, purchase or other contractual agreements between said manufacturer and the grantee of the equipment authorization. Retention of records by said manufacturer in these circumstances shall satisfy the grantee's responsibility under paragraph (a) of this section.

(c) The records listed in paragraph (a) of this section shall be retained for one year after the manufacture of said equipment item has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the grantee (or under paragraph (b) of this section the manufacturer) is officially notified that an investigation or any other administrative proceeding involving his equipment has been instituted.

(d) The records required to be retained by paragraph (a) of this section shall apply only to equipment for which the equipment authorization was issued on or after September 1, 1974 or for which the license, purchase or other contractual agreement in paragraph (b) of this section was signed on or after September 1, 1974.

§2.939 Revocation or withdrawal of equipment authorization. (a) The Commission may revoke any equipment authorization:

(1) For false statements or representations made either in the application or in materials or response submitted in connection therewith or in records required to be kept by 2.938.

(2) If upon subsequent inspection or operation it is determined that the equipment does not conform to the pertinent technical requirements or to the representations made in the original application.

(3) If it is determined that changes have been made in the equipment other than those authorized by the rules or otherwise expressly authorized by the Commission.

(4) Because of conditions coming to the attention of the Commission which would warrant it in refusing to grant an original application.

(b) Revocation of an equipment authorization shall be made in the same manner as revocation of radio station licenses.

(c) The Commission may withdraw any equipment authorization in the event of changes in its technical standards. The procedure to be followed will be set forth in the order promulgating such new technical standards (after appropriate rulemaking proceedings) and will provide a suitable amortization period for equipment in hands of users and in the manufacturing process.

2.941 Availability of information relating to grants. (a) Grants of equipment authorization, other than for receivers and equipment authorized for use under Parts 15 or 18 of this Chapter, will be publicly announced in a timely manner by the Commission. Information about a receiver authorization or about the authorization of a specific model of equipment under Parts 15 or 18 of this Chapter may be obtained by contracting the Commission's Office of Science and Technology.

(b) Information relating to equipment authorizations such as data submitted by the applicant in connection with an authorization application, laboratory tests of the device, etc., shall be available in accordance with 0.457 of this chapter.

2.943 Submission of equipment for testing. (a) The Commission may require an applicant for type acceptance, certification or notification to submit one or more sample units for measurement at the Commission's laboratory.

(b) In the event the applicant believes that shipment of the sample to the Commission's laboratory is impractical because of the size or weight of the equipment, or the power requirement, or for any other reason, the applicant may submit a written explanation why such shipment is impractical and should not be required.

2.945 Sampling tests of equipment compliance. The Commission will, from time to time, request the grantee to submit various equipment(s) for which an equipment authorization(s) has been granted, to determine the extent to which subsequent production of such equipment continues to comply with the data filed by the applicant (or measured by the Commission in the case of type approved equipment). Shipping costs to the Commission's laboratory and return shall be borne by the grantee.

2.947 Measurement procedure. (a) The Commission will accept data which have been measured in accordance with the following standards or measurement procedures:

(1) Those set forth in OCE Bulletins or reports prepared by the Office of the Chief Engineer of the Commission. These will be issued as required, and specified in the particular part of the rules where applicable.

(2) Those acceptable to the Commission and published by national engineering societies such as the Electronic Industries Association, the Institute of Electrical and Electronic Engineers, Inc., and the American National Standards Institute.

(3) Any measurement procedure acceptable to the Commission may be used to prepare data demonstrating compliance with the requirements of this chapter.

(b) Information submitted pursuant to paragraph (a) of this section shall completely identify the specific standard or measurement procedure used.

(c) In the case of equipment requiring measurement procedures not specified in the references set forth in paragraph (a) (1) and (2) of this section, the applicant shall submit a detailed description of the measurement procedures actually used.

(d) A listing of the test equipment used shall be submitted.

(e) If deemed necessary, the Commission may require additional information concerning the measurement procedures employed in obtaining the data submitted for equipment authorization purposes.

VERIFICATION

2.951 Cross reference. The provisions of 2.901, et seq., shall apply to equipment subject to verification.

2.952 Limitation on verification. (a) Verification signifies that the manufacturer or importer has determined that the equipment has been shown to be capable of compliance with the applicable technical standards if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. Compliance with these standards shall not be construed to be a finding by the manufacturer or importer with respect to matters not encompassed by the Commission's rules.

(b) Verification of the equipment by the manufacturer or importer is effective until a termination date is otherwise established by the Commission.

(c) No person shall, in any advertising matter, brochure, etc., use or make reference to a verification in a deceptive or misleading manner or convey the impression that such verification reflects more than a determination by the manufacturer or importer that the device or product has been shown to be capable of compliance with the applicable technical standards of the Commission's rules.

2.593 Responsibility of manufacturer or importer. (a) In verifying compliance, the manufacturer or importer (in the case of imported equipment) warrants that each unit of equipment marketed under the verification procedure will conform to the unit tested and found acceptable by the manufacturer or importer and that data on file with the manufacturer or importer continues to be representative of the equipment being produced under such verification within the variation that can be expected due to quantity production and testing on a statistical basis.

(b) The importer of equipment subject to verification may upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical standards rely on the manufacturer or independent testing agency to verify compliance. The test records required by 2.955 however should be in the English language and made available to the Commission upon a reasonable request.

(c) In the case of transfer of control of equipment, as in the case of sale or merger of the grantee, the new manufacturer or importer shall bear the responsibility of continued compliance of the equipment.

(d) Equipment verified by the manufacturer or importer shall be reverified if the modification or change adversely affects the emanation characteristics of the modified equipment. The manufacturer or importer continues to bear the responsibility for continued compliance of subsequently produced equipment.

2.954 Identification. The identification of equipment subject to verification shall be consistent with current manufacturer or marketing practices: PROVIDED, The manufacturer or importer maintains adequate identification records for each unit verified to facilitate positive identification of each equipment marketed.

2.955 Retention of records. (a) For each equipment subject to verification, the manufacturer (or importer) shall maintain the records listed below:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the requirements of 2.953.

(2) A record of the procedures used for production inspection and testing (if tests were performed) to insure the conformance required by 2.952. (Statistical production line emission testing is not required).

(b) The records listed in paragraph (a) of this section shall be retained for two years after the manufacturer of said equipment item has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the manufacturer or importer is officially notified that an investigation or any other administrative proceeding involving his equipment has been instituted.

2.956 FCC inspection and submission of equipment for testing. (a) Each manufacturer or importer of equipment subject to verification shall upon receipt of reasonable request submit to the Commission the records required by 2.955.

(b) The Commission may require the manufacturer or importer of equipment subject to verification to submit one or more of sample units for measurements at the Commission's Laboratory.

(c) In the event the manufacturer believes that shipment of the sample to the Commission's Laboratory is impractical because of the size or weight of the equipment, or the power requirement or for any other reason, the applicant may submit a written explanation why such shipment is impractical and should not be required.

2.957 Sampling tests of equipment compliance. The Commission will from time to time, request the manufacturer or importer to submit to the FCC Laboratory in Columbia, Maryland, various equipment(s) for which verification has been made, to determine the extent to which subsequently produced units continue to comply with the applicable standards. Shipping costs to the Commission's Laboratory and return shall be borne by the manufacturer or importer.

TYPE APPROVAL

2.961 Cross reference. The provisions of this subpart, 2.901 et seq. shall apply to applications for and grant of type approval.

2.963 Application for type approval. (a) An Application for type approval shall be filed on FCC Form 729 with all questions answered.

(b) The application shall be filed by the party whose name will be placed on the equipment.

(c) If the applicant is not the manufacturer of the equipment, he shall attach a statement explaining the relationship between the applicant and the manufacturer accompanied by a confirming statement from the actual manufacturer.

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(d) The applicant shall attach a statement containing a technical description of the equipment sufficiently complete to develop all the factors concerning compliance with the technical standards of the applicable rules. The description should include the information, listed below. If an item is not applicable, this should be stated.

- (1) Type(s) of emission.
- (2) Frequency range.
- (3) Range of operating power and description of means provided for variation of operating power.
- (4) Maximum power rating as defined in the applicable rules.
- (5) The voltages applied to and currents into the several elements of the final radio frequency amplifying device for normal operation over the power range. Indicate whether these voltages and currents are DC or AC.
- (6) Function of each electron tube, semiconductor or other active circuit device.
- (7) Complete circuit diagram.
- (8) Instruction book(s). If the instruction book(s) is not available when the application is filed a set of draft instructions should be provided and the complete instruction book(s) should be submitted not later than 60 days after the grant of type approval, or such later date as may be specified.
- (9) Tune up procedure over the power range or at specific operating power levels.
- (10) A description of all circuitry and devices provided for determining and stabilizing frequency.
- (11) A description of any circuits or devices employed for suppression of spurious radiation, for limiting modulation, and for limiting the operating power.
- (12) A photograph or drawing of the equipment identification plate or label showing the information to be placed thereon.

§2.965 Submission of equipment for type approval testing. After an application for type approval has been filed and accepted by the Commission, the applicant will be given instructions concerning the shipment of the equipment to the Commission's Laboratory. After testing is complete, the equipment will be returned to the applicant. Shipping costs to the Commission's Laboratory and return shall be borne by the applicant.

§2.967 Changes in type approval equipment. (a) No mechanical or electrical change whatsoever may be made in a type approved equipment without prior permission by the Commission.

(b) A grantee desiring to make a change shall file an application on Form 731 accompanied by the appropriate fees. The grantee shall attach a description of the change(s) and shall indicate whether the change(s) will be made in all units (including previous production) or will be made only in those units produced after the change(s) is authorized.

(c) If the Commission authorizes the change(s) requested, it may require the assignment of a new identification pursuant to 2.925 and 2.926 of this chapter.

2.969 Information required on identification label for type approved equipment. (a) Each equipment for which a type approval application is filed on or after October 27, 1980 shall bear an identification plate or label pursuant to 2.925 and 2.926. The FCC identification number for such equipment will be validated by the grant of type approval issued by the Commission.

NOTE: FCC Type Approval Numbers will not be issued for any equipment covered by type approval application filed on or after the date specified above.

(b) Each equipment for which a type approval application is filed before Oct. 27, 1980 shall have the following information on the identification plate or label.

- (1) Name of the grantee of type approval.
- (2) The words "TYPE No." or MODEL No." followed by the model number or type number assigned to the equipment by the grantee.
- (3) The words "FCC TYPE APPROVAL NO." followed by the type approval number assigned by the FCC if a type approval number has been assigned.
- (4) Any other statement or labeling requirements imposed by the rules governing the operation of this equipment.

NOTIFICATION

2.971 Cross reference. The general provisions of this subpart, 2.901 et seq., shall apply to applications for the grants of notification.

2.973 Limitations on notification. Notification is a grant of equipment authorization issued by the Commission that signifies that the applicant has determined that the equipment has been shown to be capable of compliance with the applicable technical standards in the Commission's rules if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. Compliance with these standards shall not be construed to be a finding by the applicant with respect to matters not encompassed by the Commission's rules.

2.975 Application for notification. (a) Subsequent to the determination by the applicant that the equipment complies with the applicable standards, the applicant, who shall retain the responsibility for insuring that the equipment continues to comply with such standards, shall file a request for the issuance of an equipment authorization on FCC Form 731, for each FCC Identifier, with all questions answered. Where a form item is not applicable, it shall be stated. The application shall be filed in the name of the party to whom the grantee code is assigned (see 2.926 concerning the assignment of identifier codes). The following information shall be included in the filing, either in answer to the questions on the form or as attachments thereto:

(1) Name of the applicant indicating whether the applicant is the manufacturer of the equipment, a vendor other than the manufacturer, a licensee or a prospective licensee. Where the applicant is not the manufacturer of the equipment, the name of the manufacturer shall be stated;

(2) The following technical information:

- (i) Type or types of emission(if applicable);
- (ii) Frequency range;
- (iii) Rated frequency tolerance (if applicable); and
- (iv) Rated radio frequency power output, if applicable (if variable, give the range);

(v) If the equipment is a microwave transmitter, an explanation of the type of modulation employed and of the resulting emission.

(3) A statement concerning the intended use of the device including both the type of use for which the device has been designed and the part(s) or subpart(s) of the rules governing the device;

(4) The FCC Identifier of the equipment for which notification is sought (see 2.926) and a photograph or drawing of the equipment identification plate or label showing the information to be placed thereon in accordance with 2.925;

(5) If specifically required under the rule section(s) which the equipment is to be operated, photographs of the equipment of sufficient clarity to reveal its external appearance and size, both front and back;

(6) A signed statement attesting to the following or its equivalent: This equipment has been tested in accordance with the requirements contained in the appropriate Commission regulations. To the best of my knowledge, these tests were performed using measurement procedures consistent with industry or Commission standards and demonstrate that the equipment complies with the appropriate standards. Each unit manufactured, imported or marketed, as defined in the Commission's regulations, will conform to the sample(s) tested within the variations that can be expected due to quantity production and testing on a statistical basis. I further certify that the necessary measurements were made by (state name and address of the test facility even if your own facility was used).

(b) The statement required in paragraph (a)(6) of this section shall be signed pursuant to 2,909(c).

(c) Upon satisfactory completion of the necessary testing to determine that the applicable standards are met, the submission of the material required in paragraph (a) of this section and the issuance of a grant of equipment authorization, marketing, as defined in 2.803, is permitted.

(d) The authorization of the equipment through the notification procedure may be revoked pursuant to 2.939.

(e) Further information may be requested prior to the issuance of a grant of notification. This information may include measurement data, photographs, circuit diagrams and descriptions, or any other material which may be deemed necessary.

2.977 Changes in notified equipment. (a) Under the notification procedure, the grantee warrants that each unit of equipment marketed under the identification specified in the grant of equipment authorization will conform to the unit(s) tested and found acceptable by the grantee and that data on file with the grantee, as required in 2.938, continues to be representative of the equipment being produced under such notification within the variation that can be expected due to quantity production and testing on a statistical basis.

(b) Changes in the electrical and mechanical construction of equipment requiring an application for, and grant of, notification are permissive, providing that the changes do not cause the equipment to exceed the standards applicable to that equipment.

(c) Permissive changes to transmitters notified for operation under Part 73 of this chapter include the following:

(1) The interconnection of a type accepted AM broadcast stereophonic exciter-generator with a notified AM broadcast transmitter in accordance with the manufacturer's instructions and upon completion of measurements showing that the modified transmitter meets the emission limitations applicable thereto.

(2) The interconnection of a utility load management exciter with a notified AM broadcast transmitter in accordance with the manufacturer's instruction and completion of equipment performance measurements showing the transmitter meets the minimum performance requirements applicable thereto.

(3) The addition of TV broadcast subcarrier generators to a notified TV broadcast transmitter or the addition of FM broadcast subcarrier generators to a notified FM broadcast transmitter, provided the transmitter exciter is designed for subcarrier operation without mechanical or electrical alterations to the exciter or other transmitter circuits.

(4) The addition of TV broadcast stereophonic generators to a notified TV broadcast transmitter or the addition of FM broadcast stereophonic generators to a notified FM broadcast transmitter, provided the transmitter exciter is designed for stereophonic sound operation without mechanical or electrical alterations to the exciter or other transmitter circuits.

(5) The addition of subscription TV encoding equipment for which the FCC has granted advance provisions of §2.1400 in Subpart M and §73.644(c) of Part 73 of this Chapter to a notified transmitter.

(d) Notwithstanding the provisions of this section, broadcast licensees or permittees are permitted to modify notified transmitters pursuant to 73.1690 of the FCC's Rules.

2.979 Information required on identification label for notified equipment.

Each equipment for which a notification application is filed shall bear an identification plate or label pursuant to 2.925 and 2.926. The FCC Identifier for such equipment will be validated by the grant of notification.

Type Acceptance

§2.981 Cross reference. (a) The general provisions of this subpart 2.901 et seq., shall apply to applications for and grants of type acceptance.

§2.983 Application for type acceptance. An application for type acceptance shall be filed on FCC Form 731 by the party whose name will be placed on the equipment and shall include the following information either in answer to the questions on the form or as attachments thereto.

(a) Name of applicant indicating whether the applicant is the manufacturer of the equipment, a vendor other than the manufacturer (include the name of manufacturer), a licensee or a prospective licensee.

(b) Identification of equipment for which type acceptance is sought.

(c) Information whether quantity (more than one) production is planned.

(d) Technical description of the equipment sufficiently complete to develop all the factors concerning compliance with the technical standards of the applicable rule part(s). The description shall include the following items:

(1) Type or types of emission.

(2) Frequency range.

(3) Range of operating power values or specific operating power levels, and description of any means provided for variation of operating power.

(4) Maximum power rating as defined in the applicable part(s) of the rules.

(5) The dc voltages applied to and dc currents into the several elements of the final radio frequency amplifying device for normal operation over the power range.

(6) Function of each electron tube or semiconductor or other active circuit device.

(7) Complete circuit diagrams.

(8) Instruction book(s). If the instruction book is not available when the application is filed, a set of draft instructions should be provided and the complete instruction book should be submitted as soon as available. The Commission may specify a date when the complete instruction book should be submitted to conform this requirement with the regulations of the service under which type acceptance is requested.

(9) Tune up procedure over the power range or at specific operating power levels.

(10) A description of all circuitry and devices provided for determining and stabilizing frequency.

(11) A description of any circuits or devices employed for suppression of spurious radiation, for limiting modulation, and for limiting power.

(12) For equipment employing digital modulation techniques, a detailed description of the modulation system to be used, including the response characteristics (frequency, phase and amplitude) of any filters provided and a description of the modulating wavetrain, shall be submitted for the maximum rated conditions under which the equipment will be operated.

(e) The data required by 2.985 through 2.997, inclusive, measured in accordance with the procedures set out in 2.999.

(f) A photograph or drawing of the equipment identification plate or label showing the information to be placed thereon.

(g) Photographs (8" x 10") of the equipment of sufficient clarity to reveal equipment construction and layout, including meters, if any, and labels for controls and meters and sufficient views of the internal construction to define component placement and chassis assembly. Insofar as these requirements are met by photographs or drawings contained in instruction manuals supplied with the type acceptance request, additional photographs are necessary only to complete the required showing.

(h) An encoder device used for the generation of the EBS Attention Signal as defined in Section 73.906 need not comply with paragraphs (d) (1) through (d) (5) inclusive, (d) (9) through (d) (12) inclusive and paragraph (e) of this Section. In lieu of these requirements measurements must be submitted showing compliance with Section 73.940.

(i) The application for type acceptance of an external radio frequency power amplifier under Part 97 of this chapter need not be accompanied by the data required by Paragraph (e) of this section. In lieu thereof, measurements shall be submitted to show compliance with the technical specifications in Subpart C of Part 97 of this chapter and such information as required by Section 2.1005 of this part.

(j) An application for type acceptance of an AM broadcast stereophonic exciter-generator intended for interfacing with existing type-accepted or notified transmitters must include measurements made on a complete stereophonic transmitter. The instruction book required under paragraph (d)(8) of this section must include complete specifications and circuit requirements for interconnecting with existing transmitters. The instruction book must also provide a full description of the equipment and measurement procedures to monitor modulation and to verify that the combination of stereo exciter-generator and transmitter meet the emission limitations of 73.44.

§2.985 Measurements required: RF power output. (a) For transmitters other than single sideband, independent sideband and controlled carrier radiotelephone, power output shall be measured at the RF output terminals when the transmitter is adjusted in accordance with the tune-up procedure to give the values of current and voltage on the circuit elements specified in 2.983(d) (5). The electrical characteristics of the radio frequency load attached to the output terminals when this test is made shall be stated.

(b) For single sideband, independent sideband, and single channel, controlled carrier radiotelephone transmitters the procedure specified in subparagraph (a) of this paragraph shall be employed and, in addition the transmitter shall be modulated during the test as follows. In all tests, the input level of the modulating signal shall be such as to develop rated peak envelope power or carrier power, as appropriate, for the transmitter.

(1) Single sideband transmitters in the A3A or A3J emission modes--by two tones at frequencies of 400 Hz and 1800 Hz (for 3.0 kHz authorized bandwidth), or 500 Hz and 2100 Hz (3.5 kHz authorized bandwidth), or 500 Hz and 2400 Hz for 4.0 kHz authorized bandwidth), applied simultaneously, the input levels of the tones so adjusted that the two principal frequency components of the radio frequency signal produced are equal in magnitude.

(2) Single sideband transmitters in the A3H emission mode--by one tone at a frequency of 1500 Hz (for 3.0 kHz authorized bandwidth), or 1700 Hz (for 3.5 kHz authorized bandwidth), or 1900 Hz (for 4.0 kHz authorized bandwidth), the level of which is adjusted to produce a radio frequency signal component equal in magnitude to the magnitude of the carrier in this mode.

(3) As an alternative to paragraphs (b) (1) and (2) of this paragraph other tones besides those specified may be used as modulating frequencies, upon a sufficient showing of need. However, any tones so chosen must not be harmonically related, the third and fifth order intermodulating products which occur must fall within the -25 dB step of the emission bandwidth limitation curve, the seventh and ninth order intermodulation product must fall within the 35 dB step of the reference curve and the 11th and all higher products must fall beyond the -35 dB step of the referenced curve.

(4) Independent sideband transmitters having two channels by 1700 Hz tones applied simultaneously in both channels, the input levels of the tones so adjusted that the two main frequency components of the radio frequency signal produced are equal in magnitude.

(5) Independent sideband transmitters having more than two channels by an appropriate signal or signals applied to all channels simultaneously. The input signals specified by the manufacturer for normal operation.

(6) Single-channel controlled-carrier transmitters in the A3 emission mode--by a 2500 Hz tone.

(c) For measurements conducted pursuant to paragraphs (a) and (b) of this section, all calculations and methods used by the applicant for determining carrier power or peak envelope power, as appropriate, on the basis of measured power in the radio frequency load attached to the transmitter output terminals shall be shown. Under the test conditions specified, no components of the emission spectrum shall exceed the limits specified in the applicable rule parts as necessary for meeting occupied bandwidth or emission limitations.

§2.987 Measurements required: Modulation characteristics. (a) Voice modulated communication equipment: A curve or equivalent data showing the frequency response of the audio modulating circuit over a range of 100 to 5000 cps shall be submitted. For equipment required to have an audio low-pass filter, a curve showing the frequency response between the modulation limiter and the modulated stage shall be submitted.

(b) Equipment which employs modulating limiting: A curve or family of curves showing the percentage of modulation versus the modulation input voltage shall be supplied. The information submitted shall be sufficient to show modulation limiting capability throughout the range of modulating frequencies and input modulating signal levels employed.

(c) Single sideband and independent sideband radiotelephone transmitters which employ a device or circuit to limit peak envelope power: A curve showing the peak envelope power output versus the modulation input voltage shall be supplied. The modulating signals shall be the same in frequency as specified in paragraph (c) of 2.989 for the occupied bandwidth tests.

(d) Other types of equipment: A curve or equivalent data which shows that the equipment will meet the modulation requirements of the rules under which the equipment is to be licensed.

§2.989 Measurement required: Occupied bandwidth. The occupied bandwidth that is the frequency bandwidth such that, below its lower and above its upper frequency limits, the mean powers radiated are each equal to 0.5 percent of the total mean power radiated by a given emission shall be measured under the following conditions as applicable:

(a) Radiotelegraph transmitters for manual operation when keyed at 16 dots per second.

(b) Other keyed transmitters--when keyed at the maximum machine speed.

(c) Radiotelephone transmitters equipped with a device to limit modulation or peak envelope power shall be modulated as follows. For single sideband and independent sideband transmitters, the input level of the modulating signal shall be 10 dB greater than that necessary to produce rated peak envelope power.

(1) Other than single sideband or independent sideband transmitters--when modulated by a 2500 Hz tone at an input level 16 dB greater than that necessary to produce 50 percent modulation. The input level shall be established at the frequency of maximum response of the audio modulating circuit.

(2) Single sideband transmitters in A3A or A3J emission modes--when modulated by two tones at frequencies of 400 Hz and 1800 Hz (for 3.0 kHz authorized bandwidth), or 500 Hz and 2100 Hz (for 3.5 kHz authorized bandwidth), or 500 Hz and 2400 Hz (for 4.0 kHz authorized bandwidth), applied simultaneously. The input levels of the tones shall be so adjusted that the two principal frequency components of the radio frequency signal produced are equal in magnitude.

(3) Single sideband transmitters in the A3H emission mode--when modulated by one tone at a frequency of 1500 Hz (for 3.0 kHz authorized bandwidth), or 1700 Hz (for 3.5 kHz authorized bandwidth), or 1900 Hz (for 4.0 kHz authorized bandwidth), the level of which is adjusted to produce a radio frequency signal component equal in magnitude to the magnitude of the carrier in this mode.

(4) As an alternative to paragraphs (C) (2) and (3) of this section, other tones besides those specified may be used as modulating frequencies, upon a sufficient showing of need. However, any tones so chosen must not be harmonically related, the third and fifth order intermodulation products which occur must fall within the -25 dB step of the emission bandwidth limitation curve, the seventh and ninth order products must fall within the -35 dB step of the referenced curve and the eleventh and all higher order products must fall beyond the -35 dB step of the referenced curve.

(5) Independent sideband transmitters having two channels--when modulated by 1700 Hz tones applied simultaneously to both channels. The input levels of the tones shall be so adjusted that the two principal frequency components of the radio frequency signal produced are equal in magnitude.

(d) Radiotelephone transmitters without a device to limit modulation or peak envelope power shall be modulated as follows. For single sideband and independent sideband transmitters, the input level of the modulating signal should be that necessary to produce rated peak envelope power.

(1) Other than single sideband or independent sideband transmitters--when modulated by a 2500 Hz tone of sufficient level to produce at least 85 percent modulation. If 85 percent modulation is unattainable, the highest percentage modulation shall be used.

(2) Single sideband transmitters in A3A or A3J emission modes--when modulated by two tones at frequencies of 400 Hz and 1800 Hz (for 3.0 kHz authorized bandwidth), or 500 Hz and 2100 Hz (for 3.5 kHz authorized bandwidth), or 500 Hz and 2400 Hz (for 4.0 kHz authorized bandwidth), applied simultaneously. The input levels of the tones shall be so adjusted that the two principal frequency components of the radio frequency signal produced are equal in magnitude.

(3) Single sideband transmitters in the A3H emission mode--when modulated by one tone at a frequency of 1500 Hz (for 3.0 kHz authorized bandwidth), or 1700 Hz (for 3.5 kHz authorized bandwidth), or 1900 Hz (for 4.0 kHz authorized bandwidth), the level of which is adjusted to produce a radio frequency signal component equal in magnitude to the magnitude of the carrier in this mode.

(4) As an alternative to paragraphs (d) (2) and (3) of this section, other tones besides those specified may be used as modulating frequencies, upon a sufficient showing of need. However, any tones so chosen must not be harmonically related, the third and fifth order intermodulation products which occur must fall within the -25 dB step of the emission bandwidth limitation curve, the seventh and ninth order products must fall within the -35 dB step of the referenced curve

and the eleventh and all higher order products must fall beyond the -35 dB step of the referenced curve.

(5) Independent sideband transmitters having two channels--when modulated by 1700 Hz tones applied simultaneously to both channels. The input levels of the tones shall be so adjusted that the two principal frequency components of the radio frequency signal produced are equal in magnitude.

(e) Transmitters for use in the Radio Broadcast Services:

(1) AM broadcast transmitters for monaural operation -- when amplitude modulated 85% by a 7,500 Hz input signal.

(2) AM broadcast stereophonic operation -- when the transmitter operated under any stereophonic modulation condition not exceeding 100% on negative peaks and tested under the conditions specified in 73.128 in Part 73 of the FCC rules for AM broadcast stations.

(3) FM broadcast transmitter not used for multiplex operation --when modulated 85 percent by a 15 kHz input signal.

(4) FM broadcast transmitters for multiplex operation under Subsidiary Communication authorization (SCA) when carrier is modulated 70 percent by a 15 kHz main channel input signal, and modulated an additional 15 percent simultaneously by a 67 kHz subcarrier (unmodulated).

(5) FM broadcast transmitter for stereophonic operation--when modulated by a 15 kHz input signal to the main channel, a 15 kHz input signal to the stereophonic subchannel, and the pilot subcarrier simultaneously. The input signal to the main channel and stereophonic subchannel each shall produce 38 percent modulation of the carrier. The pilot subcarrier should produce 9 percent modulation of the carrier.

(6) Television broadcast monaural transmitters--when modulated 85 percent by a 15 kHz input signal.

(7) Television broadcast stereophonic sound transmitters--when the transmitter is modulated with a 15 kHz input signal to the main channel and the stereophonic subchannel, any pilot subcarrier(s) and any unmodulated auxiliary subcarrier(s) which may be provided. The signals to the main channel and the stereophonic subchannel must be representative of the system being tested and when combined with any pilot subcarrier(s) or other auxiliary subcarriers shall result in 85% deviation of the maximum specified aural carrier deviation.

(f) Transmitters for which peak frequencies deviations (D) is determined in accordance with 2.202(f), and in which the modulating baseband comprises more than 3 independent speech channels--when modulated by a test signal determined in accordance with the following:

(1) A modulation reference level is established for the characteristic baseband frequency. (Modulation reference level is defined as the average power level of a sinusoidal test signal delivered to the modulator input which provides the specified value of per-channel deviation.)

(2) Modulation reference level being established, the total rms deviation of the transmitter is measured when a test signal consisting of a band of random noise, extending from below 20 kHz to the highest frequency in the baseband is applied to the modulator input through any preemphasis networks used in normal service. The average power level of the test signal shall exceed the modulation reference level by the number of decibels determined using the appropriate formula in the following table:

Number of message circuits that modulate the transmitter	Number of dB by which the average power (P_{avg}) level test signal shall reference level	Limits of P_{avg} (dBm0)
More than 3, but less than 12.....	$X + 2 \log_{10} N_c$	X: -2 to +2.6
At least 12, but less than 60.....	$X + 4 \log_{10} N_c$	X: -6.6 to -1.0
At least 60, but less than 240.....	$X + 10 \log_{10} N_c$	X: -18.6 to -15.0
240 or more.....		

Where X represents the average power in a message circuit in dBm0; N_c is the number of circuits in the multiplexed message load. P_{avg} shall be selected by the transmitter manufacturer and included with the technical data submitted with the application for type acceptance. (See § 2.202(e) in this Chapter).

(g) Transmitters in which the modulating baseband comprises not more than three independent channels--when modulated by the full complement of signals of which the transmitter is rated. The level of modulation for each channel should be set to that prescribed in rule parts applicable to the services for which the transmitter is intended. If specific modulation levels are not set forth in the rules, the tests should provide the manufacturer's maximum rated condition.

(h) Transmitters employing digital modulation techniques--when modulated by an input signal such that its amplitude and symbol rate represent the maximum rated conditions under which the equipment will be operated. The signal shall be applied through any filter networks, pseudo-random generators or other devices required in normal service. Additionally, the occupied bandwidth shall be shown for operation with any devices used for modifying the spectrum when such devices are optional at the discretion of the user.

(i) Transmitters designed for other types of modulation--when modulated by an appropriate signal of sufficient amplitude to be representative of the type of service in which used. A description of the input signal should be supplied.

§2.991 Measurements required: Spurious emissions at antenna terminals.
The radio frequency voltage or powers generated within the equipment and appearing on a spurious frequency shall be checked at the equipment output terminals when properly loaded with a suitable artificial antenna. Curves or equivalent data shall show the magnitude of each harmonic and other spurious emission that can be detected when the equipment is operated under the conditions specified in 2.989 as appropriate. The magnitude of spurious emissions which are attenuated more than 20 dB below the permissible value need not be specified.

§2.993 Measurements required: Field strength of spurious radiation.

(a) Measurements shall be made to detect spurious emissions that may be radiated directly from the cabinet, control circuits, power leads, or intermediate circuit elements under normal conditions of installation and operation. Curves or equivalent data shall be supplied showing the magnitude of each harmonic and other spurious emission. For this test, single sideband, independent sideband and controlled carrier transmitters shall be modulated under the conditions specified in paragraph (c) of 2.989, as appropriate. For equipment operating on frequencies below 890 MHz, an open field test is normally required, with the measuring instrument antenna located in the far-field at all test frequencies. In the event it is either impractical or impossible to make open field measurements (e.g., a broadcast transmitter installed in a building, measurements will be accepted of the equipment as installed. Such measurements must be accompanied by a description of the site where the measurements were made showing the location of any possible source of reflections which might distort the field strength measurements. Information submitted shall include the relative radiated power of each spurious emission with reference to the rated power output of the transmitter, assuming all emissions are radiated from halfwave dipole antennas.

(b) The measurements specified in paragraph (a) of this section shall be made for the following equipment:

- (1) Those in which the spurious emissions are required to be 60 dB or more below the mean power of the transmitter.
- (2) All equipment operating on frequencies higher than 25 MHz.
- (3) All equipment where the antenna is an integral part of, and attached directly to the transmitter.
- (4) Other types of equipment as required, where deemed necessary by the Commission.

§2.995 Measurements required: Frequency stability. (a) The frequency stability shall be measured with variation of ambient temperature as follows:

§2.995(a) (1) - (d) (1)

(1) From -30° to $+50^{\circ}$ centigrade for all equipment except that specified in subparagraphs (2) and (3) of this paragraph.

(2) From -20° to $+50^{\circ}$ centigrade for equipment to be licensed for use in the Maritime Services under Parts 81 and 83 of this chapter and equipment to be licensed for use above 952 MHz at operational fixed stations in all services, stations in the Local Television Transmission Service and Point-to-Point Microwave Radio Service under Part 21, and equipment licensed for use aboard aircraft in the Aviation Services under Part 87 of this Chapter.

(3) From 0° to $+50^{\circ}$ centigrade for equipment to be licensed for use in the Radio Broadcast Services under Part 73 of this chapter.

(b) Frequency measurements shall be made at the extremes of the specified temperature range and at intervals of not more than 10° centigrade through the range. A period of time sufficient to stabilize all of the components of the oscillator circuit at each temperature level shall be allowed prior to frequency measurement. The short term transient effects on the frequency of the transmitter due to keying (except for broadcast transmitters) and any heating element cycling normally occurring at each ambient temperature level also shall be shown. Only the portion or portions of the transmitter containing the frequency determining and stabilizing circuitry need be subjected to the temperature variation test.

(c) In addition to all other requirements of this section, the following information is required for equipment incorporating heater type crystal oscillators to be used in mobile stations, for which type acceptance is first requested after March 25, 1974, except for battery powered, hand carried, portable equipment having less than 3 watts mean output power.

(1) Measurement data showing variation in transmitter output frequency from a cold start and the elapsed time necessary for the frequency to stabilize within the applicable tolerance. Tests shall be made after temperature stabilization at each of the ambient temperature levels; the lower temperature limit 0° centigrade and $+30^{\circ}$ centigrade with no primary power applied.

(2) Beginning at each temperature level specified in paragraph (c) (1) of this section, the frequency shall be measured within one minute after application of primary power to the transmitter and at intervals of no more than one minute thereafter until ten minutes have elapsed or until sufficient measurements are obtained to indicate clearly that the frequency has stabilized within the applicable tolerance, whichever time period is greater. During each test, the ambient temperature shall not be allowed to rise more than 10° centigrade above the respective beginning ambient temperature level.

(3) The elapsed time necessary for the frequency to stabilize within the applicable tolerance from each beginning ambient temperature level as determined from the tests specified in this paragraph shall be specified in the instruction book for the transmitter furnished to the user.

(4) When it is impracticable to subject the complete transmitter to this test because of its physical dimensions or power rating, only its frequency determining and stabilizing portions need be tested.

(d) The frequency stability shall be measured with variation of primary supply voltage as follows:

(1) Vary primary supply voltage from 85 to 115 percent of the nominal value for other than hand carried battery equipment.

2.995(d)(2) - 2.1001(b)(1)

(2) For hand carried, battery operated equipment, reduce primary supply voltage to the battery operating end point which shall be specified by the manufacturer.

(3) The supply voltage shall be measured at the input to the cable normally provided with the equipment, or at the power supply terminals if cables are not normally provided. Effects on frequency of transmitter keying (except for broadcast transmitters) and any heating element cycling at the nominal supply voltage and at each extreme also shall be shown.

(e) When deemed necessary, the Commission may require tests of frequency stability under conditions in addition to those specifically set out in paragraphs (a) (b) (c) and (d) of this section. (For example measurements showing the effect of proximity to large metal objects, or of various types of antennas, may be required for portable equipment).

§2.997 Frequency spectrum to be investigated. In all of the measurements set forth in 2.991 and 2.993 of this part, the spectrum should be investigated from the lowest radio frequency generated in the equipment up to at least the 10th harmonic of the carrier frequency or to the highest frequency practicable in the present state of the art of measuring techniques, whichever is lower. Particular attention should be paid to harmonics and subharmonics of the carrier frequencies as well as to those frequencies removed from the carrier by multiples of the oscillator frequency. Radiation at the frequencies of multiplier stages should also be checked. The amplitude of spurious emissions which are attenuated more than 20 dB below the permissible value need not be reported.

2.999 Measurement procedure. The measurement procedures employed shall be in accordance with the requirements set forth in 2.947. In addition, any specific test requirements set forth in the particular rules governing the equipment for which type acceptance is requested shall apply.

2.1001 Variation or changes in type accepted equipment. (a) Equipment of the same type is defined for purposes of type acceptance as being equipment which is electrically and mechanically interchangeable and in addition will have the same basic tube or semiconductor line up, frequently multiplication, basic frequency determining and stabilizing circuitry, basic modulator circuit and maximum power rating variations in electrical and mechanical construction, other than the items indicated above are permitted provided the variation or change is made in compliance with the requirements of paragraphs (b), (c) and (d) of this section.

(b) Two classes of permissive changes may be made in type accepted equipment without requiring a new application for and grant of type acceptance.

(1) A Class I permissive change includes those modifications in the equipment which do not change the equipment characteristics beyond the rates limits established by the manufacturer and accepted by the Commission when type acceptance is granted, and which do not change the type of equipment as defined in paragraph (a) of this section. No filing with the Commission is required for a Class I permissive change.

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(2) A Class II permissive change includes those modifications which bring the performance of the equipment outside the manufacturer's rated limits as originally filed but not below the minimum requirements of the applicable rules, and do not change the type of equipment as defined in paragraph (a) of this section. When a Class II permissive change is made by the grantee, he shall supply the Commission with complete information and results of tests of the characteristics affected by such change. The modified equipment shall not be marketed under the existing grant of type acceptance prior to acknowledgement by the Commission that the change is acceptable.

(3) When a Class II permissive change is made by other than the grantee of type acceptance, the information and data specified in paragraph (2) of this section shall be supplied by the person making the change. The modified equipment shall not be operated under an authorization of the Commission prior to acknowledgement by the Commission that the change is acceptable.

(c) A grantee desiring to make a change other than a permissive change as described in paragraph (b) of this section, shall file an application on Form 731 accompanied by the required fees.

(d) If the Commission authorizes the change requested, it may require the assignment of a new type number.

(e) Users shall not modify their own equipment except as provided by Paragraphs (b) and (f) of this section.

(f) Equipment type accepted for use in the Amateur Radio Service pursuant to the requirements of Part 97 of this chapter may be modified without regard to the conditions specified in Paragraph (b) of this section, provided the following conditions are met:

(1) Any person performing such modifications on equipment used under Part 97 of this chapter must possess a valid amateur radio operator license of the class required for the use of the equipment being modified.

(2) Modifications made pursuant to this paragraph, are limited to equipment used at licensed amateur radio stations.

(3) Modifications specified or performed by equipment manufacturers or suppliers must be in accordance with the requirements set forth in Paragraph (b) of this section.

(4) Modifications specified or performed by licensees in the Amateur Radio Service on equipment other than that at specific licensed amateur radio stations must be in accordance with the requirements set forth in Paragraph (b) of this section.

(5) The station licensee shall be responsible for insuring that modified equipment used at his station will comply with the applicable technical standards in Part 97 of this chapter.

(g) The interconnection of a type accepted AM broadcast stereophonic exciter-generator with a type accepted AM broadcast transmitter in accordance with the manufacturer's instructions and upon completion of measurements showing that the modified transmitter meets the emission limitation requirements of 73.44 is defined as a Class I permissive change for compliance with this section.

(h) The interconnection of a multiplexing exciter with a type accepted AM broadcast transmitter in accordance with the manufacturer's instructions without electrical or mechanical modification of the transmitter circuits and completion of equipment performance measurements showing the transmitter meets the minimum performance requirements applicable thereto is defined as a Class I permissive change for compliance with this section.

(2) The words "FCC TRANSMITTER DATE" followed by the number assigned to the equipment by the grantee. The abbreviations "XMTR" or "TX" may be used in place of the word "TRANSMITTER."

NOTE -- If the equipment is a transceiver containing transmitting and receiving capability and a single identifier is assigned, the words "FCC DATA," followed by the number assigned to the equipment by the grantee shall be used. If the transmitter part and the receiver part are assigned separate identifiers, the marking of paragraph (2) shall be used for the transmitter part and the marking of Section 2.1045(b)(3) shall be used for the receiver part if the receiver part is subject to the requirement for certification.

(3) Any other statement or labeling requirement imposed by the rules governing the operation of this equipment, except that statements of compliance with equipment approval rules or technical standards may be permitted to appear in a clear and recognizable manner elsewhere on the equipment.

2.1005 Equipment for use in the Amateur Radio Service. (a) The general provisions of Sections 2.981, 2.983, 2.991, 2.993, 2.997, 2.999, 2.1001, and 2.1003 shall apply to application for and grants of type acceptance for equipment operated under the requirements of Part 97 of this chapter, the Amateur Radio Service.

(b) When performing the tests specified in Sections 2.991 and 2.993 of this part, the center of the transmitted bandwidth shall be within the operating frequency band by an amount equal to 50 percent of the bandwidth utilized for the tests. In addition, said tests shall be made on at least one frequency in each of the bands within which the equipment is capable of tuning.

(c) Any supplier of an external radio frequency power amplifier kit as defined by Subsection 97.3(aa) of this chapter shall comply with the following requirements:

(1) Assembly of one unit of a specific type shall be made in exact accordance with the instructions being supplied with the product being marketed. If all of the necessary components are not normally furnished with the kit, assembly shall be made using the recommended components.

(2) The measurement data required for type acceptance shall be obtained for this unit and submitted with the type acceptance application. Unless otherwise requested, it is not necessary to submit this unit with the application.

(3) A copy of the exact instructions which will be provided for assembly of the equipment shall be provided in addition to other material required by Section 2.983 of this part.

(4) The identification label required by sections 2.925 and 2.1003 of this part shall be permanently affixed to the assembled unit and shall be of sufficient size so as to be easily read. The following information shall be shown on the label:

(Name of Grantee of Type Acceptance)

FCC ID: (The number assigned to the equipment by the Grantor)

This amplifier can be expected to comply with part 97 of the FCC Regulations when assembled and aligned in strict accordance with the instruction manual using components supplied with the kit or an exact equivalent thereof.

(i) The addition of TV broadcast subcarrier generators to a type accepted TV broadcast transmitter or the addition of FM broadcast subcarrier generators to a type accepted FM broadcast transmitter, provided the transmitter exciter is designed for subcarrier operation without mechanical or electrical alternations to the exciter or other transmitter circuits.

(j) The addition of TV broadcast stereophonic generators to a type accepted TV broadcast transmitter or the addition of FM broadcast stereophonic generators to a type accepted FM broadcast transmitter, provided the transmitter exciter is designed for stereophonic sound operation without mechanical or electrical alternations to the exciter or other transmitter circuits.

(k) The addition of subscription TV encoding equipment for which the FCC has granted advance approval under the provisions of 2.1400 in Subpart M and 73.644(c) of Part 73 to a type accepted transmitter is considered a Class I permissive change described in paragraph (b)(1) of this section.

(1) Notwithstanding the provisions of this section, broadcast licensees or permittees are permitted to modify type accepted equipment pursuant to 73.1690 of the FCC's Rules.

2.1003 Information required on identification label for type accepted equipment. (a) Each equipment for which a type acceptance application is filed on or after May 2, 1981 shall bear an identification plate or label pursuant to 2.925.996. The FCC Identifier for such equipment will be validated by the grant of type acceptance issued by the Commission.

(b) For each equipment covered by a type acceptance application filed before May 2, 1981 the identification plate or label shall contain the following:

- (1) Name of the grantee of the type acceptance.

(Title and signature of responsible representative of Grantee)

STATEMENT OF COMPLIANCE

I state that I have constructed this equipment in accordance with the instruction manual and using the parts furnished by the supplier of this kit.

(Signature)

(Date)

(Amateur call sign)

(Class of license)

(Expiration date of license)

(To be signed by the person responsible for proper assembly of kit.)

(5) If requested, an unassembled unit shall be provided for assembly and test by the Commission. Shipping charges to and from the Commission's Laboratory shall be borne by the applicant for type acceptance.

(d) Type acceptance of external radio frequency power amplifiers and amplifier kits may be denied when denial serves the public interest, convenience, and necessity by preventing the use of these amplifiers in services other than the Amateur Radio Service. Other uses of these amplifiers, such as in the Citizens Band Radio Service, is prohibited (section 95.509 of this Chapter). Examples of features which may result in the denial of type acceptance are contained in section 97.77 of this Chapter.

Certification

2.1031 Cross reference. The general provisions of this subpart 2.901 et. seq. apply to applications for and grants of certification.

2.1033 Application for certification under Part 15. (a) An application for certification shall be filed on FCC Form 731 with all items answered. Items that do not apply shall be so noted.

(b) The application shall be accompanied by a report of measurements, and such other attachments as specified in the rules governing that particular equipment.

(c) The application shall be accompanied by a photograph showing the general appearance of the equipment and operating control available to the user. The photograph shall be 8" by 10" in size, or mounted on paper 8" by 10" to 8-1/2 by 11" in size. If the identification label does not appear on this photograph or is too small to be read, a second photograph shall be attached showing the identification label in sufficient detail so that the name and number can be read. In lieu of the second photograph, a sample label, or a facsimile thereof, mounted on a full-size sheet, and a sketch showing where this label will be placed on the equipment, may be submitted.

§2.1035 Abbreviated procedure for identical or private label equipment. (a) Application for certification of a private label equipment which is essentially identical to previously certificated equipment shall be filed on FCC Form 731. Items that do not apply shall be so noted.

(b) The application shall be accompanied by the required fees.

(c) In lieu of the report of measurements and other attachments required by 2.1033(b), the application may be accompanied by a statement setting forth:

(1) The name and FCC Identifier of the previously certificated receiver. If the original grant of authorization was made before May 1, 1981, name and model number shall be submitted.

(2) The date when certification was granted.

(3) A description of how the new equipment differs from the previously certificated equipment.

(4) A statement that the data previously filed is applicable to and representative of the new equipment.

(d) The application shall be accompanied by a photograph, 8" x 10" in size, showing the front of the equipment. If the identification plate does not appear on this photograph, or is too small to be read, a second photograph, 8 x 10 shall be attached showing the identification plate in sufficient detail so that the name and number can be read. In lieu of the second photo, a sample label, or a facsimile thereof, may be attached with a sketch showing where this label will be placed on the equipment.

2.1041 Measurement Procedures. The measurement procedures are specified in the rules governing the particular device for which certification is requested.

2.1043 Variations or changes in certificated equipment. (a) Variations in the electrical and mechanical construction of equipment requiring an application for, and grant of, certification are permissible providing that the variations, either do not affect the characteristics required to be reported to the Commission, or provided the various changes are made in accordance with paragraphs (b), (c) or (d) of this section.

(b) Two classes of permissive changes may be made in certificated equipment without requiring a new application for and grant of certification. Neither class or change shall result in a change in name or model number.

(1) A Class I permissive change includes those modifications in the equipment which do not degrade the characteristics reported by the manufacturer and accepted by the Commission when certification is granted. No filing with the Commission is required for a Class I permissive change.

(2) A Class II permissive change includes those modifications which degrade the performance characteristics as reported to the Commission at the time of the initial certification. Such degraded performance must still meet the minimum requirements of the applicable rules. When a Class II permissive change is made by the grantee, he shall supply the Commission with complete information and the results of tests of the characteristics affected by such change. The modified equipment shall not be marketed prior to acknowledgement by the Commission that the change is acceptable.

(c) A grantee desiring to make a change other than a permissive change described in paragraph (b) of this section, shall file an application Form on Form 731 accompanied by the required fees. The grantee shall attach a description of the change(s) to be made and a statement indicating whether the change(s) will be made in all units (including previous production) or will be made only in those units produced after the change is authorized.

(d) A change which results in a new name and/or model number (with or without change in circuitry) requires a new application for, and grant of, certification. If the change affects the characteristics required to be reported, a complete application shall be filed. If the characteristics required to be reported are not changed the abbreviated procedure of Section 2.1035 may be used.

§2.1045 Information required on identification label for certificated equipment.

(a) Each equipment for which a certification application is filed on or after October 27, 1980, shall be identified pursuant to §§2.925 and 2.926. The FCC Identifier for such equipment will be validated by the grant of certification issued by the Commission.

(b) For each equipment covered by a certification application filed before October 27, 1980, the identification label shall contain at least the following:

(1) The trade name. The trade name, if shown elsewhere on the equipment, shall be the same as that shown on the label.

(2) For consumer equipment (i.e., broadcast receivers, Part 14 walkie-talkies, and other equipment sold to the general public), the words "MODEL NO." followed by the number assigned to the equipment by the grantee. If the identification label contains other numbers in addition to that required by this paragraph, such as "SERVICE NO.," "CATALOG NO." or other similar terms, to avoid confusion with the identifier required by the Commission, the words "MODEL NO." may be preceded by the term "FCC DATA" to facilitate recognition of the identifying number used for FCC.

(3) For communications equipment (i.e., receivers and other equipment normally used at licensed stations) the words "FCC RECEIVER DATA" followed by the number assigned to the equipment by the grantee. The abbreviations "RCVR" or "RX" may be used in lieu of the word "RECEIVER."

NOTE: If the equipment is a transceiver having transmitting and receiving capability and a single identifier is assigned the marking of Section 2.1003(b)(2) shall be used. If the transmitter part and the receiver part are assigned separate identifiers, the marking of §2.1003(b)(2) shall be used for the transmitter part and the marking of §2.1003(b)(2) or (3) shall be used for the receiver part.

(4) Any other statement or labelling requirement imposed by the rules governing operation of this equipment, except that statements of compliance with equipment approval rules or technical standards may appear in a clear and recognizable manner elsewhere on the equipment.

Filing for Application Reference

§2.1061 Submission of technical information for application reference. An application for station authorization in some services requires a detailed technical description of the equipment proposed to be used. In order to simplify the preparation and processing of applications by eliminating the need for the submission of equipment specifications with each application, the Commission will accept for application reference purposes detailed technical specifications of equipment designed for use in these services. Manufacturers desiring to avail themselves of this procedure should submit all information required by the application form and the rules for the services in which the equipment is to be used. An application for a station authorization submitted subsequent to such filing may refer to the technical information so filed.

§2.1063 Disclaimer re technical information filed for application reference. Receipt by the Commission of data for application purposes does not imply that the Commission has made or intends to make any finding regarding the acceptability of the equipment for licensing and such equipment will not be included on the list of equipment acceptable for licensing. Each applicant is expected to exercise appropriate care in the selection of equipment to insure that the unit selected will comply with the rules governing the service in which it is proposed to operate.

§2.1065 Identification and changes in equipment information filed for application reference. (a) Each type of equipment for which information is filed for application reference purposes shall be identified by a type number assigned by the manufacturer of the equipment. The type number shall consist of a series of Arabic numerals or capital letters or a combination thereof, and may include punctuation marks and spaces. The total of Arabic numerals, capital letters, punctuation marks and spaces in any assigned type number shall not exceed 17. The type number shall be shown on an identification plate or label affixed in a conspicuous place to such equipment.

(b) If the assignment of a different type number is required as a result of equipment modification, a new identification plate or label bearing the new type number shall be affixed to the modified equipment.

Note - It is recommended that such equipment be identified with a nameplate pursuant to 2.925 except for deletion of the FCC Identifier, which will not be assigned to nor listed for such equipment.

2.1201 Purpose. (a) In order to carry out its responsibilities under the Communications Act and the various treaties and international regulations, and in order to promote efficient use of the radio spectrum the Commission has developed technical standards for radio frequency equipment. The technical standards applicable to individual types of equipment are found in that part of the rules governing the service wherein the equipment is to be operated. In addition to the technical standards, the rules governing the service may require that such equipment receive an equipment authorization from the Commission as a prerequisite for marketing and importing this equipment into the U.S.A. The marketing rules, 2.801 et seq., were adopted pursuant to the authority in section 302 of the Communications Act of 1934, as amended, (47 U.S.C. 302).

(b) The rules in this subpart set out the conditions under which radio frequency devices and subassemblies of radio frequency devices capable of causing harmful interference to radio communications, as defined in 2.801 may be imported into the U.S.A.

NOTE -- The term subassembly as used in this Subpart shall mean chassis or other essentially completed device which requires the addition of cabinets, knobs, speakers or other similar minor attachments to complete the device for marketing. Subassembly shall not encompass individual components, such as coils, condensers, IF strips, etc., which are used as replacements or which require considerable fabrication before a device subject to FCC marketing rules is produced.

2.1202 General requirement for entry into the U.S.A. (a) A radio frequency device or radio frequency subassembly shall be refused entry or withdrawal for consumption into the Customs territory of the United States unless accompanied by an original plus one copy of FCC Form 740 certifying that the entry meets one of the conditions for entry set out in this subpart.

(b) A separate Form 740 shall be used for each separately identified device or subassembly regardless of quantity involved.

(c) The original of the Form 740 shall be sent to the Commission at the following address on or before the date the shipment is delivered to a U.S. port of entry; Federal Communications Commission, Washington, D.C. 20554; Attention: Imports.

2.1203 Entry and release when equipment authorization is required. (a) A radio frequency device requiring an equipment authorization as a prerequisite for importation into the Customs territory of the U.S.A., shall be refused entry or withdrawal for consumption unless the entry papers for such shipment is accompanied by one copy of FCC Form 740 certifying that the appropriate equipment authorization has been issued by the FCC.

(b) The original of the Form 740 shall be sent to the Commission at the following address on or before the date the shipment is delivered to a U.S. port of entry: Federal Communications Commission, Washington, D.C. 20554; Attention: Imports.

2.1204 RESERVED.

2.1205 Entry and release when equipment authorization is not required. (a) A radio frequency device for which the Commission has established technical specifications, but for which equipment authorization is not required shall be refused entry or withdrawal for consumption into the Customs territory of the U.S. unless the entry papers for such shipment are accompanied by a copy of FCC Form 740 certifying that the device complies with the applicable FCC technical specifications.

(b) The original of the Form 740 shall be sent to the Commission at the following address on or before the date the shipment is delivered to a U.S. port of entry: Federal Communications Commission, Washington, D.C. 20554; Attention: Imports.

(c) A subassembly (See 2.1201(b)) which is designated to be included in a device ultimately subject to FCC regulations shall be refused entry or withdrawal for consumption into the Customs territory of the U.S. unless accompanied by one copy of the FCC Form 740 certifying that the necessary steps required to insure compliance with applicable FCC rules, including obtaining an equipment authorization, if required, shall be taken before the completed device is marketed.

(d) The original of the Form 740 shall be sent to the Commission at the following address on or before the date the shipment is delivered to a U.S. port of entry: Federal Communications Commission, Washington, D.C. 20554; Attention: Imports.

2.1206 RESERVED.

2.1207 Entry for test and evaluation. A radio frequency device imported for the purpose of evaluation at industry trade shows under the restrictions of 2.803 or to determine compliance with pertinent technical requirements may be released in limited quantities under a bond furnished in accordance with U.S. Customs Service. The entry papers for such entries must be accompanied by one copy of FCC Form 740 certifying that the device is imported for the purpose of export and will not be offered for sale or otherwise marketed for use within the U.S.A.

2.1208 RESERVED.

2.1209 Entry for export. A radio frequency device imported solely for export may be released under a bond furnished in accordance with U.S. Customs Service regulations. The entry papers for such entries must be accompanied by one copy of FCC Form 740 certifying that the device is imported for the purpose of export and will not be offered for sale or otherwise marketed for use within the U.S.A.

(b) The original of the Form 740 shall be sent to the Commission at the following address on or before the date the shipment is delivered to a U.S. port of entry: Federal Communications Commission, Washington, D.C. 20554; Attention: Imports.

2.1210 RESERVED.

2.1211 Entry for Federal Government use. (a) A radio frequency device or subassembly imported for use exclusively by the U.S. Government, or agency thereof, shall be accompanied by one copy of FCC Form 740 certifying this to be the case.

(b) The original of the Form 740 shall be sent to the Commission at the following address on or before the date the shipment is delivered to a U.S. port of entry: Federal Communications Commission, Washington, D.C. 20554; Attention: Imports.

2.1212 RESERVED.

2.1213 Entry for personal use. An individual entering the U.S.A. with not more than three receivers for his own use may, in lieu of certifying compliance, declare that the receivers are for personal use and are not intended for sale. The U.S. Customs Service may waive the requirements of 2.1202 for such entry.

2.1214 RESERVED.

2.1215 Entry for repair or further fabrications. (a) A radio frequency device or a subassembly thereof, imported for repair or further fabrication and which is then exported may be released under bond in accordance with U.S. Customs Service regulations. The entry papers for such entries must be accompanied by one copy of FCC Form 740 certifying this to be the case.

(b) The original of the Form 740 shall be sent to the Commission at the following address on or before the date the shipment is delivered to a U.S. port of entry: Federal Communications Commission, Washington, D.C. 20554; Attention: Imports.

2.1216 - 2.1218 RESERVED.

2.1219 Non-complying equipment.

A radio frequency device, or subassembly thereof, which either does not comply with the applicable provisions of this chapter or the importer/consignee lacks sufficient information to certify compliance, shall be refused entry or withdrawal for consumption into the Customs territory of the U.S.A.

Note - The U.S. Customs Service has indicated that it will follow the procedure delineated below for such non-complying equipment.

(a) If any radio frequency device or subassembly thereof is denied entry under the provisions of 2.1202, 2.1203 or 2.1205, the District Director will refuse to release the shipment for entry into the United States, will detain such equipment at the importers risk and expense, and shall issue a notice of such refusal to the importer or consignee.

(b) Alternatively, the importer or consignee may complete (2) copies of Form 740 and furnish a bond in accordance with U.S. Customs Service regulations to allow time for him to accomplish whatever is necessary to bring the device into compliance. Such entry shall be detained by the importer for consignee and must not be used or otherwise disposed of until (2) copies of FCC Form 740, certifying that the equipment complies with applicable FCC rules, have been sent to the Commission.

(c) If the importer or consignee fails to demonstrate that the equipment entering under paragraph (b) of this section has been brought into compliance within 90 days after entry, or within such additional time as may be allowed for good cause shown, he will at his risk and expense immediately deliver to the District Director of Customs the conditionally released equipment.

(d) In the event the equipment is not redelivered, the importer may be subject to criminal prosecution pursuant to section 302, 501 and 502 of the Communications Act of 1934, as amended, (47 U.S.C. 302, 501, 502) in addition to penalties assessed in accordance with U.S. Customs Service regulations.

(e) Equipment which is refused entry under this section or which is redelivered in accordance with the above described procedure and which is not exported under customs supervisions within 90 days from date of notice of refusal of admission or date of redelivery will be disposed of under customs laws and regulations; provided, that such disposition will not result in an introduction into the U.S.A. which is in violation of the regulations in this chapter.

SUBPART M---ADVANCE APPROVAL OF SUBSCRIPTION TRANSMISSION SYSTEMS

Advance Approval Procedure

2.1400 Application for Advance Approval under Part 73. (a) An original application for advance approval of a subscription TV (STV) system and one copy thereof must be filed by the party who will be responsible for the conformance of the system with the subscription TV standards specified in Part 73 of the Rules. The application must include information to show that the system conforms to the requirements of 73.644(b).

(b) Advance approval may be applied for and granted in accordance with and subject to the following conditions and limitations:

(1) A separate request for each different technical system must be made by the applicant in writing.

(2) The applicant must certify that the application was prepared by or under the direction of the applicant and that the facts set forth are true and correct to the best of the applicant's knowledge and belief.

(3) The applicant must identify the technical system by a name or type number and define the system in terms of its technical characteristics; a functional block diagram must be included. In addition, a complete description of the encoded aural and visual baseband and transmitted signals and of the encoding equipment used by the applicant must be supplied. These descriptions must include equipment circuit diagrams and photographs and digrams or oscilographs of both baseband and transmitted aural and visual signal waveforms and of the signal basebands and occupied bandwidths. If aural subcarriers are to be used for transmitting aural portion of the subscription program, for decoder control, or for other purposes, a full description and specifications of the multiplex subcarrier signals and all modulation levels must be included.

(4) Preliminary test data must be submitted to show system capability with regard to compliance with the criteria set forth in 73.644(b).

(5) The applicant must identify the specific requirements of 73.682, 73.687 and 73.699 (Figures 6 and 7) from which the transmitted signal will normally deviate.

(6) The applicant must specify the method to be used in determining and maintaining the operating power of the transmitter if the procedures given in 73.663 cannot be used due to suppression of the synchronizing pluses or for other reasons. If the operating power of the station must be reduced to accommodate the encoded aural or video signal, the operating power limitations must be specified.

(7) The applicant must supply any additional information and test data requested by the FCC, to show to its satisfaction that the criteria given in 73.644(b) are met.

(8) The information submitted by the applicant may be subject to check by field tests conducted without expense to the FCC or, deemed necessary, at the laboratory or in the field by FCC personnel. This may include the actual submission of equipment for system testing under the provisions of 2.945 of Part 2 of the Rules.

(9) No technical system will be deemed approved unless and until the FCC has notified the applicant in writing of the approval will be by letter to the applicant.

(10) Approval by the FCC is limited to a determination that the particular technical system (the scheme for encoding and decoding the subscription TV signal) is capable of meeting the criteria given in 73.644(b).

(11) The FCC will maintain a listing of approved technical systems.

(c) Multichannel sound may be transmitted for stereophonic or bilingual service with encoded subscription programs provided the technical operating specifications for this service are included in the application for advance system approval.

(d) Subscriber decoder devices must comply with any applicable provisions of Subpart H, Part 15 of the FCC Rules for TV interface devices.

(e) No modifications may be made by either the applicant or the user of a system having advance FCC approval that would change any of the operating conditions as submitted in the application for advance approval. Should system modifications be necessary, a new application must be submitted in accordance with the requirements of this Section.