property with respect to such REIT on the date which is 2 years after the date on which the REIT acquired the property, unless the REIT has been granted an extension or extensions of such 2-year period (hereinafter referred as the "grace period") in accordance with this section. In the event that the grace period is extended, the property ceases to be foreclosure property on the day immediately following the last day of the grace period, as extended.

(b) *Rules relating to date of acquisition.* Foreclosure property which secured an indebtedness owed to the REIT is acquired for purposes of section 856(e) on the date on which the REIT acquires ownership of the property for Federal income tax purposes. Foreclosure property which a REIT owned and leased to another is acquired for purposes of section 856(e) on the date on which the REIT acquires possession of the property from its lessee. A REIT will not be considered to have acquired ownership of property for purposes of section 856(e) where it takes control of such property as a mortgagee-in-possession and cannot receive any profit or sustain any loss with respect to the property except as a creditor of the mortgagor. A REIT may be considered to have acquired ownership of property for purposes of section 856(e) even though legal title to the property is held by another person. For example, where, upon foreclosure of a mortgage held by the REIT, legal title to the property is acquired in the name of a nominee for the exclusive benefit of the REIT and the REIT is the equitable owner of the property, the REIT will be considered to have acquired ownership of such property for purposes of section 856(e). Generally, the fact that under local law the mortgagor has a right of redemption after foreclosure shall not be relevant in determining whether the REIT has acquired ownership of the property for purposes of section 856(e).

(c) *Extension of grace period*—(1) If the REIT establishes to the satisfaction of the district director of the internal revenue district in which is located the principal place of business or principal office or agency of the REIT that an extension of the grace period is necessary for the orderly liquidation of the REIT's interest in foreclosure property, or for an orderly renegotiation of a lease or leases of the property, the district director may extend such 2-year period. An extension shall be for a period of not more than 1 year, and not more than two extensions shall be granted with respect to any property. An extension of the grace period may be granted by the district director either before or after the date on which the grace period, but for such extension, would expire, and shall be effective as of the date on which the grace period, but for such extension, would expire.

(2) Generally, in order to establish the necessity of an extension, the REIT must demonstrate that it has made good faith efforts to renegotiate leases with respect to, or dispose of, the foreclosure property. In certain cases, however, the REIT may establish the necessity of an extension even though it has not made such efforts. For example, if the REIT demonstrates that, for valid business reasons, construction of the foreclosure property could not be completed before the expiration of the grace period, the necessity of the extension could be established even though the REIT had made no effort to sell the property. The fact that property was acquired as foreclosure property prior to January 3, 1975 (the date of enactment of section 856(e)), generally shall be considered as a factor (but not a controlling factor) which tends to establish that an extension of the grace period is necessary.

(d) *Time for requesting an extension of the grace period.*—(1) *General rule.* A request for an extension of the grace period must be filed with the appropriate district director more than 60 days before the day on which the grace period would otherwise expire.

(2) *Exception.* In the case of a grace period which would otherwise expire before August 6, 1976, a request for an extension will be considered to be timely filed if filed on or before June 7, 1976.

(e) *Information required.* The request for an extension of the grace period shall identify the property with respect to which the request is being made and shall also include the following information:

(1) The name, address, and taxpayer identification number of the REIT,

(2) The date the property was acquired as foreclosure property by the REIT,

(3) The taxable year of the REIT in which the property was acquired,

(4) If the REIT has been previously granted an extension of the grace period with respect to the property, a statement to that effect (which shall include the date on which the grace period, as extended, expires) and a copy of the information which accompanied the request for the previous extension,

(5) A statement of the reasons why the grace period should be extended,

(6) A description of any efforts made by the REIT after the acquisition of the property to dispose of the property or to renegotiate any lease with respect to the property, and

(7) A description of any other factors which tend to establish that an extension of the grace period is necessary for the orderly liquidation of the REIT's interest in the property, or for an orderly renegotiation of a lease or leases of the property.

(f) The REIT shall also furnish any additional information requested by the district director after the request for extension is filed.

Because of the need for immediate guidance with respect to the extension of the 2-year grace period with respect to foreclosure property provided by section 6 of Public Law 93-625, it is found impracticable to issue this Treasury decision with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: April 1, 1976.

WILLIAM M. GOLDSTEIN,
Deputy Assistant Secretary of the Treasury.

[FR Doc.76-10139 Filed 4-7-76;8:45 am]

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Mount Rainier National Park, Washington

On August 7, 1975, there was published in the FEDERAL REGISTER (40 FR 33222) a notice of proposed rulemaking setting forth an amendment to the fishing regulations at Mount Rainier National Park.

Interested parties were given the opportunity to submit, not later than September 7, 1975, comments, suggestions, or objections regarding the proposed regulation.

No comments were received. Accordingly, the amendment is adopted without change as set forth below.

Effective date: May 10, 1976.

Signed at Mount Rainier National Park, Longmire, Washington, on November 7, 1975.

DANIEL J. TOBIN, Jr.,
Superintendent, Mount Rainier National Park.

Section 7.5(a)(5) is amended as set forth below:

§ 7.5 Mount Rainier National Park.

(a) *Fishing.* (1) Fishing in all park waters shall remain open year round. * * *

(5) The daily catch and possession limit for fish taken from park waters shall be six pounds and one fish, not to exceed 12 fish.

[FR Doc.76-10089 Filed 4-7-76;8:45 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 3—ADJUDICATION

Pension, Compensation, and Dependency and Indemnity Compensation, Apportionments

On page 5303 of the FEDERAL REGISTER of February 5, 1976, there was published a notice of proposed regulatory development to make changes to Part 3 of Title 38, Code of Federal Regulations, resulting from Pub. L. 94-71 (89 Stat. 395) which effected general increases in rates of disability compensation and rates of

dependency and indemnity compensation for widows, widowers and children. Section 3.461 which specifies the conditions under which awards of dependency and indemnity compensation will be apportioned for children not in the custody of the widow or widower is amended to increase the share payable to a child as an apportionment from $35 to $40 and to delete obsolete provisions.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulations.

No written comments have been received and the proposed regulations are hereby adopted without change and are set forth below,

Effective date. Section 3.461 is effective August 1, 1975.

Approved: April 1, 1976.

By direction of the Administrator.

[SEAL] ODELL W. VAUGHN,
Deputy Administrator.

1. In § 3.460, paragraphs (a), (b) and (c) are revised to read as follows:

§ 3.460 Death pension.

* * * * *

(a) *Civil and Indian wars; on and after October 1, 1967.*

Widow (Widower)	$54.29
Child	23.84
Each additional child	8.13

(b) *Spanish-American War; on and after October 1, 1967.*

Widow (Widower)	$49.51
Child	28.62
Each additional child	8.13

(c) *Mexican border period, World War I or later war periods.* (1) On and after October 1, 1954, under the laws in effect prior to July 1, 1960 (38 U.S.C. 541), the widow's or widower's share will be:

$37.80—if there is only 1 child
$31.50—if there are 2 or more children

(2) On and after October 1, 1967, under 38 U.S.C. 541, the widow's or widower's share will be:

$56.00—if her (his) annual income will not exceed $1,000
$43.00—if her (his) annual income will not exceed $2,000
$29.00—if her (his) annual income will not exceed $3,000

(3) On and after January 1, 1969, where pension is payable under 38 U.S.C. 541, the shares for the widow or widower and children will be not less than the rate which would be authorized under paragraph (c)(2) of this section. If a greater total rate is available, the additional amount will be payable to the widow (widower) or children or will be divided. See § 3.451.

2. Section 3.461 is revised to read as follows:

§ 3.461 Dependency and indemnity compensation.

(a) *Conditions under which apportionment may be made.* The widow's or widower's award of dependency and indemnity compensation will be apportioned where there is a child or children under 18 years of age and not in the custody of the widow or widower. The widow's or widower's award of dependency and indemnity compensation will not be apportioned under this condition for a child over the age of 18 years.

(b) *Rates payable.* (1) The share for each of the children under 18 years of age, including those in the widow's (widower's) custody as well as those who are not in her (his) custody, will be $40 per month. The share for the widow (widower) will be the difference between the children's shares and the total amount payable. In the application of this rule, however, the widow's (widower's) share will not be reduced to an amount less than 50 percent of that to which she (he) would otherwise be entitled.

(2) The additional amount of aid and attendance, where applicable, will be added to the widow's (widower's) share and not otherwise included in the computation.

(3) Where the widow (widower) has elected to receive dependency and indemnity compensation instead of death compensation, the share of dependency and indemnity compensation for a child or children under 18 years of age will be whichever is the greater:

(i) The apportioned share computed under paragraph (b)(1) of this section; or

(ii) The share which would have been payable as death compensation but not in excess of the total dependency and indemnity compensation.

(4) [Revoked]

[FR Doc.76-10170 Filed 4-7-76;8:45 am]

PART 36—LOAN GUARANTY

Interest Rate Change

The Veterans Administration is amending §§ 36.4212(a)(2) and (3), 36.4311(a) and 36.4503(a), Title 38 of the Code of Federal Regulations to reduce the maximum allowable interest rate on new loans.

Sections 36.4311(a) and 36.4503(a), Title 38 of the Code of Federal Regulations are being amended to reduce the maximum interest rate on new guaranteed, insured and direct loans from 8¾ to 8½ percent. Section 36.4212(a)(2) and (3), Title 38 of the Code of Federal Regulations relating to that portion of a mobile home loan which finances the purchase of a lot and the cost of necessary site preparation is amended to reduce the maximum interest rate from 8¾ to 8½ percent. Thus, the interest rate on such loans will be consistent with that in effect on other guaranteed and insured loans for real estate purposes.

Compliance with the provisions of § 1.12 of this chapter is waived in this instance because failure to do so would delay the effective date of the amendments for a period in excess of 40 days and deprive veteran-purchasers of the benefit of the interest rate reductions during that time.

1. In § 36.4212, paragraph (a)(2) and (3) is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to March 30, 1976. * * *

(2) 8½ percent simple interest per annum for that portion of the loan which finances the purchase of a lot and the cost of necessary site preparation, if any.

(3) 8½ percent simple interest per annum on that portion of a loan which will finance the cost of the site preparation necessary to make a lot owned by the veteran acceptable as the site for the mobile home purchased with the proceeds of the loan except that a rate of not to exceed 12 percent may be charged if the portion of the loan to pay for the cost of such necessary site preparation does not exceed $2,500.

* * * * *

2. In § 36.4311, paragraph (a) is revised to read as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration which specify an interest rate in excess of 8½ per centum per annum, effective March 30, 1976, the interest rate on any loan guaranteed or insured wholly or in part on or after such date may not exceed 8½ per centum per annum on the unpaid principal balance.

* * * * *

3. In § 36.4503, paragraph (a) is revised to read as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after December 31, 1974, shall not exceed an amount which bears the same ratio to $25,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $17,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Loans made by the Veterans Administration shall bear interest at the rate of 8½ percent per annum.

* * * * *

These VA Regulations are effective March 30, 1976.

Approved: March 29, 1976.

By direction of the Administrator.

[SEAL] ODELL W. VAUGHN,
Deputy Administrator.

[FR Doc.76-10169 Filed 4-7-76;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E-185]

PART 101–25—GENERAL

Submission of Supply Activity Reports

This regulation provides a revised date for submission of the Supply Activity Report to the General Services Administration.

Subpart 101–25.48—Reports

Section 101–25.4801(a) is revised to read as follows:

§ 101–25.4801 Supply Activity Report.

(a) Executive agencies, except the Department of Defense, shall submit reports on GSA Form 1473, Supply Activity Report (Interagency Report Control No. 1220–GSA–AN), illustrated at § 101–25.4902–1473, for each fiscal year in an original and one copy. Reports, including negative reports if applicable, shall be forwarded to the General Services Administration (FF), Washington, DC 20406, by December 15.

* * * * *

Subpart 101–25.49—Illustrations of Forms

1. Section 101–25.4902(b) is revised to read as follows:

§ 101–25.4902 GSA Forms.

* * * * *

(b) GSA forms in this section may be obtained initially from the General Services Administration (3 FNDD), Union and Franklin Streets Annex, Building 11, Alexandria, VA 22314. Agency regional or field offices should submit future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (BRO), Washington, DC 20405.

2. Section 101–25.4902–1473 is revised to illustrate the July 1975 edition of GSA Form 1473, Supply Activity Report.

NOTE: The form illustrated in § 101–25.4902–1473 is filed as part of the original document and does not appear in the FEDERAL REGISTER.

(Section 205(c), 63 Stat. 390; 40 U.S.C. 486 (c))

Effective date. This regulation is effective upon publication in the FEDERAL REGISTER.

Dated: April 1, 1976.

JACK ECKERD,
Administrator of General Services.

[FR Doc.76–10125 Filed 4–7–76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20626; FCC 76–237]

PART 0—COMMISSION ORGANIZATION

PART 1—PRACTICE AND PROCEDURE

Adjudicatory Re-regulation Proposals

By the Commission: Commissioner Hooks concurring in the result. 1. This Report and Order concludes a critically important phase of the Commission's effort to reduce unwarranted "delay" in the performance of its functions. The procedural reforms adopted today culminate over a year and a half of study, discussion, and evaluation. This comprehensive review of the adjudicatory process began on July 5, 1974, with the creation of the Chairman's Task Force on Adjudicatory Re-regulation. After a one year study of existing FCC and federal agency procedures and consultation with staff members, Federal Communications Bar Association (FCBA) and American Bar Association (ABA) committees, the Task Force submitted its report on July 18, 1975. The Task Force proposed changes in Commission hearing procedures in ten separate areas: (1) Consent Procedures; (2) Processing of Radio Applications; (3) Framing of Hearing Issues; (4) Predesignation Procedures for Mutually Exclusive Applications; (5) Petitions to Enlarge, Modify or Delete Hearing Issues; (6) Written Procedures; (7) Reliance on and Support of the Administrative Law Judges; (8) Discretionary Review of Initial Decisions; (9) Exceptions to Initial Decisions; and (10) Applicantions for Review. Following submission of the Task Force Report, a special committee appointed by Chairman Wiley developed specific proposals to implement possible reforms of the Commission's adjudicatory processes. These proposed reforms and accompanying rule changes were set forth in a Notice of Proposed Rulemaking, FCC 75–1250, 40 FR 54436, released November 14, 1975. Comments were received from thirteen organizations[1] by the February 2, 1976, deadline for comments.

2. Comments addressed a number of the proposed reforms. Some changes or modifications proposed by the commenting parties have been adopted; accordingly, some of the proposed rules as set forth in the Notice of Proposed Rulemaking have been rewritten, modified, or deleted. See Appendices A and B herein. However, the major reforms proposed have been adopted in substance.

3. We wish to make clear, as we stated in the Notice of Proposed Rulemaking, that the rules and policies adopted here apply generally to adjudication of radio applications. Of the two specific proposals related to common carrier services, only one—reliance on administrative law judges to prepare initial and/or recommended decisions—has been adopted in this Order. We have deferred adoption of consent procedures for common carrier proceedings pending the study by the newly established Task Force on Common Carrier Procedural Re-regulation,[2] in order that the Task Force may have an opportunity to assess the efficacy of such a reform in the context of its general overview of the "delay" problem in that area.

SUMMARY OF MAJOR RULE CHANGES

4. As a result of this proceeding, we are adopting today major changes in our adjudicatory processes. These changes are set forth in twelve basic sections:

Section I, Consent Procedures—Rules are adopted which will permit resolution of issues by agreement of a party or parties and the Commission Bureau, subject to approval by the Administrative Law Judge, at any time subsequent to designation of a matter for hearing. These new procedures will afford the opportunity for avoiding protracted adjudication where compliance with Commission rules and policies can be secured through agreement, and the party's qualifications to remain a licensee are not in question.

Section II, Processing of Broadcast Radio Applications—The Commission will collect data on processing line times in order to identify problem areas. In addition, a policy of issuing two letters—the first dealing with engineering questions, and the second dealing with remaining questions—will be adopted with strict time limits imposed for the submission of responses by applicants. This should facilitate the identification and possible resolution of Commission concerns in an early stage.

Section III, Framing of the Issues—The Commission will attempt to draft hearing issues as narrowly as possible in order to carefully define the scope of matters to be explored at the hearing, thus helping to eliminate the introduction of irrelevant and time-consuming evidence.

Section IV, Pre-designation Procedures for Mutually-Exclusive Applications—New Procedures are adopted which are designed to promote the expeditious and early preparation of cases. In addition, they will encourage earliest possible specification of issues and disclosure of positions.

Section V, Petitions to Enlarge, Modify or Delete Hearing Issues—The new procedures will allow for prompt resolution of interlocutory matters by the presiding officer familiar with the hearing record. Moreover, the Administrative Law Judge's resolution of interlocutory disputes will be generally reviewed at the time of filing exceptions to the Initial Decision, thereby reducing time-consuming review of matters which may well be rendered moot by developments at the hearing or in the Initial Decision itself. In addition, we have codified the *Edgefield Saluda* doctrine to provide that untimely motions to change hearing issues will only be considered in circumstances where they relate to matters of probably decisional significance that involve substantial public interest questions.

Section VI, Written Procedures—Administrative Law Judges are authorized to require submission of written evidence in cases involving applications for new or changed facilities and in comparative hearings on applications for new facilities. This will avoid unnecessarily prolonging hearings due to taking of oral testimony where written submissions will serve just as well.

[1] The Federal Communications Bar Association (FCBA); Air Transport Association of America (ATA); American Telephone and Telegraph Company (AT&T); The Department of Defense (DOD); Farrand, Malti, Spillane & Cooper (Farrand, Malti); Gordon & Healy; GTE Service Corporation (GTE); Public Interest Research Group (PIRG); RCA Global Communications, Inc. (RCA Global); Southern Pacific Communications Company (Southern Pacific); Southern Broadcasting (Southern); Wilkinson, Cragun & Barker (Wilkinson, Cragun); Citizens Communications Center (CCC). The Comments of CCC were filed on February 6, 1976 with a "Motion for Leave to Accept Late-Filed Comments and To Set a Time for Filing Replies." The CCC comments have been considered in full, but its request to file reply comments is denied.

[2] See Public Notice of March 17, 1976, FCC 76–238.

Section VII, Reliance on and Support of Administrative Law Judges in Ratemaking Cases—The presumption of the general rule will be that the presiding officer in ratemaking cases pursuant to Sections 201–205 of the Communications Act will prepare the Initial or Recommended Decision.

Section VIII, Review of Initial Decisions—Procedures are adopted which are intended to structure our processes to foster issue-oriented briefs and advocacy. This will result in time-savings in staff analysis of pleadings, and accordingly, allow for quicker Commission action on pending matters.

Section IX, Exceptions—The method of filing exceptions to Initial Decisions has been streamlined to discourage attempts to litigate every aspect of a case, irrespective of its materiality or immateriality to an ultimate decision. This will help facilitate staff review and preparation of decisions.

Section X, Applications for Review of Final Review Board Decisions—A *certiorari* procedure will apply when Commission review of final Review Board decisions is sought. This will permit the Commission to deny promptly an application for review where no issues warranting Commission attention are present in the case, but afford full review where the Board's decision is determined to raise concerns warranting detailed Commission consideration.

Section XI, Extensions of Time and Length of Pleadings—Strict rules on extensions of time and length of pleadings are being adopted to foreclose dilatoriness and overpleading by parties.

Section XII, Goals and Time Tables for Commissioners, Review Board and Commission Staff—Goals and time tables for actions by the Commissioners, Review Board, and Commission Staff have previously (on December 14, 1975) been adopted as guidelines for actions in the adjudicatory process.

5. Section I, *Consent procedures.* Under this heading, we proposed procedures for the negotiation of consent orders. Formal procedures would be available under which a party in hearing—on issues involving violations of law, rules or policy other than issues involving his basic qualifications to be a licensee—and the appropriate operating Bureau could negotiate a consent agreement in which a party would agree to comply with the pertinent requirements in the future without admission of past unlawful conduct. If the presiding officer accepts the agreement, he enters a consent order closing out the case, subject only to appeal or review by the Commission on its own motion. The consent procedure, as proposed, would be available only after designation for hearing and prior to the beginning of hearing sessions.

6. All those who commented on this proposal support the basic concept of consent procedures, and a number urge that they be available prior to designation for hearing and after the hearing has begun. The FCBA states that these formal procedures should be available only after designation, but that existing informal settlement procedures prior to designation should continue unchanged. The FCBA and AT&T suggest that we defer applying the consent procedures to common carrier proceedings until after the comprehensive study of common carrier procedures mentioned in the Notice has been completed. Southern Pacific, on the other hand, takes the position that consent procedures would be very useful in common carrier cases and urges their use in such cases. AT&T argues that provision should be made for waiver of the rights of third parties, and Southern suggests that the right of third parties to appeal be restricted. The FCBA suggests that we require Commission approval of consent agreements. AT&T states that no party should be compelled to participate in consent procedures. It states further that a party who has joined in a consent agreement should be permitted to withdraw if the agreement is later modified by the Commission. It also takes the position that the staff responsible for designation of the matter for hearing should not participate in negotiations. CCC states that the same procedures should apply to all types of cases. It asserts that public notice of consent orders should be given by the consenting party, in broadcasts, cablecasts, and bills sent to affected customers, and that 60 days should be allowed for appeal, so that third parties will have an opportunity to familiarize themselves with the order.

7. Under the final rules, consent procedures will be available at any time after designation for hearing. Parties will be required to notify the administrative law judge (ALJ) when negotiations are initiated, and the ALJ will have an opportunity to indicate whether they are useful, considering the stage of, and developments during, the hearing. Where appropriate, the ALJ can decide whether or not to adjourn the hearing for the purpose of negotiations. We agree with the FCBA that existing informal procedures are better suited to the predesignation stage. The consent procedures will be applicable to all adjudicatory cases to which they are suited, except that their application to common carrier cases will be deferred pending an overall study of common carrier procedures. The use of consent procedures is entirely voluntary; participation is entirely within the discretion of consenting parties, and no party, including the Bureau, is required to enter negotiations.[3] We cannot, and would not wish to, limit the rights of third parties to appeal, except as they join in the consent agreement. Third parties are entitled to participate in negotiations but are not required to do so, and may appeal if they do not join in the agreement. The Commission will act on consent orders only to the extent they are appealed or that it decides to review on its own motion. If an agreement should be modified by the Commission, any private party to the agreement will be free to withdraw. Usually, staff responsible for designating a case for hearing and the hearing staff are different. Regardless of whether they are different or the same, however, it would not appear that a separation of functions question is presented. The Bureau staff's role after designation is that of an adversary party in cases of adjudication, and the Bureau has no part in ruling on the consent order at any level. Public notice of consent orders is given after their approval by the administrative law judge. Under Section 1.302, the consent order may be appealed by a party to the proceeding within 30 days after public notice is given. Under Section 1.223(d) (para. (c) as revised) a person may file a petition to intervene after the consent order is released and, if the petition is granted, may file an appeal. The petition shall "set forth the interest of petitioner in the proceedings, show how such petitioner's participation will assist the Commission in the determination of the issues in question, and set forth reasons why it was not possible to file a timely petition to intervene. In support of intervention, it could be argued that the proceeding involves an important public interest question which should be litigated and not decided by consent and that petitioner can contribute by representing a point of view not represented by parties who did not join in the consent order. However, we do not think this opportunity for intervention justifies the special notice procedures proposed by CCC or a routine 60 day period for appeal. Where a petition to intervene is granted, petitioner will be allowed a reasonable period following grant to file the appeal.

8. Section II. *Processing of broadcast applications.* Under this heading, we stated that we would collect data to identify and deal with processing bottlenecks and that we would follow a two-letter approach for the processing of broadcast applications. In the usual case, the two-letter approach will involve an engineering letter at an early stage (if necessary) dealing with the question of whether the application is acceptable for filing. A second letter may follow when processing is essentially complete, which will deal with any other problems which are present. A 30 day period will be provided for responses to such letters.

9. The FCBA supports this proposal. Wilkinson, Cragun supports the proposal but suggests a "one letter" policy. Southern opposes any fixed 30 day limit on responses to Commission letters. Farrand, Malti urges that special problems (such as petitions to deny) should be dealt with separately and prior to routine processing. CCC, on the other hand, asserts that the Commission should not help applicants to perfect their applications if a petition to deny the application has been filed.

10. From the tenor of some of the comments, we judge we may not have made our proposal clear or that the nature of application processing is not fully understood. As we stated in the Notice of Proposed Rulemaking, the proposed procedures do "not represent a major departure from existing procedures on the processing line." The one-letter approach implies that we would fully process an application, knowing that it cannot be granted without amendment, without first affording the applicant an opportunity to make the amendment—a patently wasteful process. The 30 day period for responding to letters will be strictly applied. Applications are processed in the order of their receipt, and properly so; we can think of no proper reason to give

[3] In this respect, a new delegation of authority is needed only for the Cable Bureau.

special consideration to applications which happen to draw opposition. It would make little sense, we think, to deal with oppositions to applications before determining that the application could be granted if unopposed. Nor does it appear that this method of proceeding is more time-consuming overall than the suggested procedure of separate handling for applications which are opposed. As we stated in the Notice, we believe there is no good reason to depart from our current practice of assisting applicants to perfect their applications, a practice common to all licensing agencies at all levels of government. The alternative is to dismiss or designate for hearing on issues which can often be resolved by correspondence, a practice which seems to us abysmal in concept. As CCC states, the Commission does not "issue letters helping public representatives perfect petitions to deny." However, the Commission does routinely advise citizens concerning the requirements for filing a petition to deny, which do not compare in complexity to the required contents of applications. Nor are letters sent to applicants to perfect oppositions to petitions to deny or other pleadings.

11. This section involves no changes in the rules.

12. Section III, *Framing the issues.* Under this heading we stated that issues in all hearing cases would be drafted as narrowly as possible and decided against limiting the right of Commission Bureaus to move for enlargement of the issues. The amendment to the pre-hearing conference procedure set out in the Appendix to the Notice is discussed below under Section IV. No other rule changes were involved.

13. The FCBA supports the proposal that issues be framed narrowly, but limits such support to noncomparative issues. It states further that the Commission should urge the Bureaus to include all issues of which they are aware in the designation order. The Commission's proposal, however, speaks in terms of drafting issues as narrowly "as possible" which should satisfy the FCBA's concern regarding comparative issues. Bureaus will, of course, deal in the designation order with all relevant and material matters.

14. Section IV, *Pre-designation procedures for mutually exclusive applications.* Under this heading, we proposed the following procedures in the case of mutually exclusive broadcast applications:

(1) Applicants would be allowed 30 days after the cutoff date for the last-filed mutually exclusive application to file amendments "perfecting" their applications or to buttress their comparative positions. The positions of applicants would be frozen after this 30 day period.

(2) Applicants would be allowed 30 additional days to raise issues concerning the applications of their opponents. The 30 day period would be extended to 45 days where there are more than two competing applicants.

(3) Twenty additional days (30 if there are more than two mutually exclusive applications) would be allowed for responses to requests that issues be specified.

(4) The processing staff would review the applications, amendments and all pleadings and issue a designation order specifying issues for consideration at the hearing. This order would not be subject to review, except upon review of the initial decision.

(5) Parties would be allowed 15 days after designation to file amendments to meet issues specified in the designation order. No further amendments would be allowed.

(6) Untimely motions to enlarge the issues would be considered only if they raise questions concerning an applicant's basic qualifications. (It should be noted in this respect that the pre-designation pleading process described above specifies the timely method for requesting issues in comparative proceedings and that later requests are untimely.)

(7) Discovery would be initiated prior to the pre-hearing conference, which would be scheduled 30 days after designation.

15. The FCBA generally supports this proposal but suggests a number of changes, as follows: First, the designation order should be issued by the Bureau Chief rather than a processing line attorney. Second, the presiding officer should have authority to modify the issues. Third, the right to amend the application after designation for hearing should be limited to non-comparative issues, and the time period for filing amendments should be enlarged from 15 to 30 days. Fourth, post-designation amendments should be allowed to restore an applicant to its pre-existing competitive position where that position has been adversely affected by unforeseen circumstances, such as the death of a principal. The FCBA opposes the requirement that discovery be commenced within 30 days after designation, contending that the scope of discovery may be affected by amendments and modification of the issues. Gordon and Healy suggests that Bureau comments on motions to enlarge the issues be filed as replies so that the Bureau may have the advantage of reviewing oppositions before taking a position. It also sees an inconsistency between the pre-designation pleading process and the two-letter approach to application processing (Section II above). Wilkinson, Cragun supports the proposal but expresses concern that deferring review of the designation order, combined with the page limit on briefs, could severely restrict the applicant's ability to adequately address objections to the issues. It cautions also that high standards must be maintained in drafting issues prior to hearing, to assure that all materials bearing on a case are thoroughly and consistently analyzed. Southern states that no purpose will be served by imposing rigid time limits during the pre-designation pleading process if the staff is not current with its workload and ready to work on the application when the pleadings are filed, and suggests that staff capabilities in this respect be examined before the time limits are imposed. CCC takes the position that applicants should not be permitted to amend their applications in comparative renewal cases, contending that this encourages the applicant to make minimal proposals and to upgrade them only if challenged. It also suggests that the pre-designation issue framing process be followed in non-comparative cases in which a petition to deny is filed.

16. These varied comments will be dealt with in sequence. The Chief of the Broadcast Bureau will, in his discretion, act on designation orders under delegated authority. To avoid complicating the review of initial decisions, we are requiring that applications for review of designation orders be filed with the Commission within 5 days after the order is released, rather than as exceptions to the initial decision as proposed. However, as a matter of common practice, cases involving controversies over issues will be acted upon by the Commission. The presiding officer will have authority to modify the issues in a comparative case, but will consider a motion for modification of comparative issues only upon a showing that the matter could not have been raised during the prehearing issue framing process. See Section V below. Post-designation amendments to applications filed within 15 days after designation will be allowed only with respect to matters first raised in the designation order. We believe the FCBA's concern over post designation amendments involving comparative issues is unwarranted since comparative issues are not likely to be raised for the first time in the designation order. Except where a matter is first addressed in the designation order, sufficient opportunity to amend the application is provided prior to designation by the two-letter process and pre-designation pleading by competing applicants. Orderly and expeditious procedure requires that the application be fixed prior to designation to the extent possible. Applications may of course (and must) be amended after designation to account for unforeseen circumstances such as the death of a principal and may in this respect be amended to restore an applicant to its pre-existing competitive position. We remain persuaded that parties should initiate discovery within 30 days after designation and prior to the initial pre-hearing conference.

17. Bureau comments on motions to enlarge the issues will continue to be filed at the time for filing oppositions, so that other parties may have an opportunity to reply. As Southern suggests, it cannot be guaranteed that a staff member will be able to turn his attention to a particular case on the precise day that the pre-designation pleading periods expire. On the other hand, he may have been working on the same case for some time prior to expiration of those periods. In any event, an effort will be made to expedite processing and designate promptly. What the periods accomplish in either event is to fix the application, with amendments, and proposed issues at a set time prior to designation and to provide the staff member charged with drafting the designation order with a stable situation on which to base the order. We would also note that a period of time passes between the filing of applications and the cutoff date and that this period is a available to applicants to prepare amendments and their case against other applicants. The time limits

mitted to amend their applications in comparative renewal cases. However, as will be retained. Applicants will be pernoted above, this right applies prior to designation only, except for amendments related to issues first raised in the designation order or upon a showing of good cause for later filing. We note in this respect that a minimal application tends to attract competition, and that if amendments are not allowed, the competing applicant may be motivated to submit only a slightly better proposal. When amendments are allowed, each applicant should be motivated to upgrade to the best of his ability. The public is benefited by any such pre-designation upgrading of proposals. We do not at this stage reach the question of whether predesignation issue framing procedures should be applied in non-comparative cases.

18. We wish to clarify the relationship between the two-letter process and predesignation pleading procedures for mutually exclusive applications. The first (or engineering) letter (if needed) is usually written prior to acceptance of the application for filing. If a satisfactory response is received, the application is accepted for filing. The staff then processes the application and sends a second letter to applicants (again, only if needed) calling attention to any further deficiencies in their applications and affording applicants 30 days in which to deal with the deficiencies or problems noted. Normally, this two-letter process will be completed before the cutoff date for the last-filed application. After the cutoff date for the last-filed application applicants have 30 days to file perfecting amendments, 30 additional days to seek issues against competing applicants, and 20 days to oppose the addition of issues. When these periods have passed, the issues are drawn and the applications are designated for hearing. Applicants should not expect to receive letters from the Commission calling attention to matters raised by competing applicants or in petitions to deny.

19. Section V, *Petitions to enlarge, modify or delete hearing issues.* This heading in the Notice encompasses a number of changes, which apply to all hearing cases. First, authority to act on petitions to enlarge the issues would be transferred from the Review Board to the Administrative Law Judge presiding at the hearing. Upon further consideration, we have concluded that such authority may be vested in presiding judges by modifying the rules of procedure pursuant to 5 U.S.C. 556(c)(9), and that delegating authority to act on motions under 47 U.S.C. 155(d) is neither necessary nor appropriate and would unnecessarily complicate the procedure for appeal of such rulings. Section 1.301 of the Rules will govern such appeals. Secondly, the judges would be authorized to rule orally on all interlocutory matters whether they are raised orally or in writing. Third, interlocutory appeals from rulings of the presiding officer (including rulings on the issues) would be limited to matters appealable as a matter of right under § 1.301(a) and to matters in which the presiding officer certifies 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." Rulings which are not appealable immediately could be challenged on appeal of the case as a whole. Fourth, those interlocutory appeals which are certified by the judge would be ruled on by the Commission rather than the Review Board. Fifth, page limits for appeals would be reduced from 10 pages to 5. Finally, a new standard was proposed for acting on untimely motions to enlarge the issues; such motions would be granted only if the issues in question relate to the basic statutory qualifications of an applicant and if it is demonstrated that the allegations are likely to be proved.

20. Comments on these proposals were filed by the FCBA; the Defense Department; Farrand, Malti; Wilkinson, Cragun; Southern Broadcast Co.; GTE; and AT&T. Southern expressed some reservations, discussed below. With this exception, those commenting generally favor the proposals, but suggest a number of substantive or technical changes. Southern councils caution in transferring authority over issues to the presiding officer and in deferring appeals. It fears that a judge may be influenced to deny a motion to enlarge the issues if grant would significantly increase the burden of trying the case. It is also concerned that deferring appeals may put pressure on the reviewing authority to hold that errors at the hearing stage were harmless, to avoid the burden of remand and rehearing. We consider that these concerns are groundless. Southern also suggests that the grounds for appeal as of right be limited to orders requiring testimony or the production of documents over a claim of privilege. However, we think that the other bases for appeal as of right listed in Section 1.301(a) are sound.

21. Farrand, Malti maintains that page limits for interlocutory appeals should not be reduced to five pages, arguing that this action would work a hardship on parties, deprive the Commission of a reasonably thorough presentation of sometimes complex issues, and save little or no time. These objections are not well taken, and the page limits will be adopted as proposed.

22. *Reassessment of Edgefield-Saluda Doctrine.*[4] The FCBA and Wilkinson, Cragun suggest several changes in the proposed standard for acting on untimely motions to enlarge the issues (proposed § 1.229(c)). Both suggest that an "untimely" motion to add a comparative issue should not be denied if good cause is shown for filing late (e.g., if the motion is based on new circumstances or if the moving party could not reasonably have known at an earlier date of the facts on which the motion is based). The FCBA adds that the late motion should not be granted unless the allegations, if proved, will be of decisional significance. It also suggests that issues under §§ 1.65 or 1.514 (updating the application) should not be added unless the facts support an issue for misrepresentation or lack of candor.

23. We cannot fully accept these arguments. An untimely motion to enlarge will be considered fully on its merits only if it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing. It is expected that this standard will be strictly construed. In comparative proceedings, it should be noted that the pre-designation pleading process described in Section IV above specifies the timely method for requesting issues and that later requests are untimely. In addition, motions for modification of issues which are based on new facts or newly discovered facts must be filed within 15 days after such facts are known or could reasonably have been known to the moving party.

24. Section VI, *Written procedures.* This proposal applies only to broadcast proceedings. Under it, the presiding officer, in his discretion, would be authorized to require that written procedures be used in cases for new facilities or major changes to existing facilities. Comment was requested on the possibility of making written procedures mandatory for the comparative part of new facilities cases.

25. Comments were filed by the FCBA and Wilkinson, Cragun. The FCBA favors authorizing the presiding officer to order a written procedure in "cases involving applications for new, improved and changed facilities and in comparative hearings involving only applicants for new facilities." It opposes extension of such authority to other types of cases and, by implication, opposes mandatory procedures. Wilkinson, Cragun opposes mandatory written procedures in comparative proceedings.

26. We agree with these comments. In the absence of agreement by all parties, written procedures should not be required by the ALJ in proceedings other than those proposed. In addition, we wish to make it clear that written procedures may be used for all or part of a case, that the direct testimony of some witnesses may be taken in writing whereas the testimony of others is taken orally, and that all witnesses will, of course, be made available for cross and redirect examination.

27. Section VII, *Reliance on and support of the Administrative Law Judges.* Under this proposal, the presumption of the general rule is that the officer presiding in ratemaking proceedings pursuant to Sections 201–205 of the Communications Act would prepare an initial or recommended decision.

28. The FCBA takes the position that the proposed rule is a step in the right direction but that it does not go far enough. It maintains that the presiding officer should prepare an initial decision in all cases unless time pressures preclude preparation of any intermediate

[4] *The Edgefield-Saluda Radio Co.*, 5 FCC 2d 148 (1966).

decision and require that the Commission move immediately to preparation of a final decision. ATA, Southern and GTE take essentially the same position. DOD and Wilkinson, Cragun generally support the proposal. AT&T generally supports the proposal, but states that some matters, such as rate of return proceedings warrant expedited hearings and decisions prepared directly by or for the Commission or proceedings before the Commission *en banc*. It argues that the rules should not be so written as to preclude expedited proceedings or informal continuing surveillance procedures in appropriate cases. It maintains that the rules should be structured for flexibility and should permit a mix of the most efficient and appropriate procedures in any proceeding.

29. The rule is being adopted essentially as proposed, except that on further consideration we see no need to amend Section 1.274. We agree with AT&T that the procedures followed in a given proceeding, or aspect of a proceeding, should be tailored to the efficient solution of problems presented. Accordingly, some flexibility in the role of ALJ's in ratemaking cases has been reserved for the Commission.

30. Section VIII, *Review of Initial Decision*, and Section IX, *Exceptions*. Under these headings, we proposed a number of changes in the procedures for review of all initial decisions. First, each brief would contain (a) a subject index of the contents, (b) a table of citations, (c) a concise statement of the case, (d) a specification of the questions intended to be urged, and (e) the argument. Second, the brief and exceptions to the initial decision would be consolidated into a single document limited to 50 pages in length, and the reply brief would be limited to 25 pages; exceptions would be stated as part of the argument. Third, the discussion of exceptions in the final decision would be limited to those which are of decisional significance. The purpose of these changes is to promote issue-oriented appellate proceedings.

31. The FCBA, AT&T, DOD, Southern, and Wilkinson, Cragun submitted comments generally supporting these changes but raising questions concerning the details. The FCBA states that it should be made clear that a separate list of exceptions is no longer required. The FCBA, AT&T, and Wilkinson, Cragun express concern about the adequacy of the 50 page limit for the consolidated brief and exceptions in some cases, particularly record rule making proceedings, and urge that the Commission be prepared to enlarge the limit in appropriate cases. AT&T notes that matters previously dealt with in interlocutory appeals will also have to be dealt with in the consolidated brief and exceptions.

32. The rules are being adopted essentially as proposed. A separate list of exceptions is neither required nor allowed. The 50 page limit will apply in adjudicatory proceedings only. The other changes under this heading apply to all hearing cases. It should be noted that the page limit does not apply to the index, table of citations, and other preliminary contents of the brief. It does, however, apply to all other contents including attachments or appendices.

33. Section X, *Applications for review*. Under this heading, we proposed to limit the scope of review of all Review Board final decisions. Such decisions would no longer be subject to *de novo* review by the Commission. Review would be granted only upon a showing as to one or more of the following: (1) the Board's findings are not supported by substantial evidence in the record as a whole; (2) the Board's decision involves prejudicial errors of substantive or procedural law; (3) the Board's decision is arbitrary or capricious; (4) the Board's decision conflicts with Commission policy; or (5) the Board's decision raises a novel or important issue of law or policy which warrants Commission review. The application for review and oppositions would be limited to 10 pages. Replies would be allowed only if requested by the Commission, and if requested, would be limited to 5 pages. If the application for review were granted, parties would be afforded an opportunity to file briefs and reply briefs, which would be limited to 25 pages.

34. DOD and Wilkinson, Cragun support the proposed changes. RCA Global asks that we make it clear that the changes apply only to review of the Board's final decisions and not to review of other actions taken by the staff under delegated authority. AT&T asks that we make it clear that the changes do not apply to ratemaking proceedings. Farrand, Malti suggests that there is no need for *de novo* review at any level and that the limitations on review should also govern review of initial decisions. Gordon and Healy asks that an order granting or denying the application for review be issued within 90 days after the last pleading is filed. In the event of grant, it suggests an initial order noting the intention to grant, followed by a later order specifying the grounds upon which review is allowed and setting forth the matters to be argued. The FCBA stands alone in opposing any limitation on the scope of review. It argues that applicants should have an opportunity for *de novo* review by a broadly based body such as the Commission *en banc*. Because most applications for review are denied under the present standard for review, it contends that retention of that standard would not be unduly burdensome.

35. We are adopting the rules essentially as proposed. The changes apply only to review of Review Board final decisions and, since the Board does not decide ratemaking cases, they do not apply to ratemaking. We are not inclined at this time to apply the limitations on review to Commission review of initial decisions. Nor can we promise that all applications for review of Board decisions will be acted on within 90 days. The time required for action depends on factors, such as overall workload, which are beyond our control. By internal directive dated December 16, 1975, however, we have set goals and time tables for the Review Board, the Office of Opinions and Review, and Commissioners supervising the preparation of final decisions. See Section XII and Appendix C. The goal in the case of applications for review of a final Board decision is 45 days. In any event, a two step grant procedure would not expedite the proceeding, since the time for filing briefs would have to run from the date of the second order. Our difficulty with the FCBA position is that *de novo* review of Board decisions has been a source of substantial delay in all cases, including those in which the application for review has been denied without reasons. In all cases, extensive written staff briefing on the facts has been necessary to assure informed Commission action.

36. Section XI, *Extensions of time and length of pleadings*. Under this heading, we propose to tighten the provisions governing requests for extension of time (§ 1.46) and for permission to file pleadings in excess of the length prescribed in the rules (§ 1.48). The following statement will be added to § 1.46(a): "It is the policy of the Commission that extensions of time shall not be routinely granted." Similarly, § 1.48 will be amended to provide that "It is the policy of the Commission that requests to file pleadings in excess of the length prescribed by the Rules will not routinely be granted." Further, pleadings in excess of the prescribed length because of appendices and other specified attachments will be returned without consideration. Where the filing period is 10 days or less, the rule would require that the request be filed within 2 days after the period begins to run and that, if the request is timely, the pleading need not be filed until 2 days after the request is acted on.

37. RCA Global urges retention of the present good cause standard for acting on requests for extension of time. It notes that many Commission pleading periods are short, that parties may currently be engaged in a number of important and complex Commission proceedings, and that the quality of pleadings should not suffer from rigid adherence to inflexible pleading periods. Further, it suggests that pleadings of proper length should not be returned because of improper attachments, a better procedure being to consider the pleading without the attachments. GTE expresses concern about the 2 day limits prescribed in Section 1.48 (retained from the present rule). Because of vagaries of the mail and other delays, it fears that these periods may pass before petitioner can learn of Commission action. Where the filing period is 10 days or less, it suggests that requests to file pleadings longer than the Rules allow be received up to 2 days before the filing date and that we allow four days after Commission action to file the pleading.

38. We are concerned that the practice of requesting and granting requests for extension of time on a regular, routine basis has grown to the point of abuse and has contributed materially to the delay of proceedings. In amending § 1.46, our intention is to adjure parties and staff officials responsible for acting on requests for extensions of time to tighten up the process. Furthermore, we

adhere to the view that pleadings must be returned as unacceptable for filing because of impermissible attachments. Nor can we agree with GTE on the 2 day rule. This rule has been operative for many years, without indication of prejudice to parties. GTE's proposal would, in effect, provide an automatic extension of time whenever a request to file a lengthier pleading is submitted under Section 1.48. We suggest that the solution to any difficulties which the 2 day provision may present can be solved by telephone contact between the party filing the request and staff personnel responsible for acting or initiating action on it.

39. Similarly, we intend to adhere to page limits prescribed by the rules. Requests to file lengthier pleadings will not be viewed with favor.

40. Section XII, *Internal Directive.* We have also released today an internal directive, FCC Inst. 1150.1, FCC 75–1433, effective December 15, 1975, from the Chairman to the Office of Opinions and Review and the Review Board which sets forth changes in the internal procedures of those offices which are designed to reduce delay. In addition, we have set goals and timetables for completion of various stages of internal review by those offices. See Appendix C. We agree with those who commented that the Commission had an obligation to reform its internal procedures which are a source of delay. The implemented changes set specific goals for processing by the Office of Opinions and Review with respect to interlocutory and other applications for review and petitions for reconsideration, summaries of exceptions prepared for oral argument, draft decisions following instructions from the Commission, and review of decisions by the supervising Commissioner. Similarly, the Review Board staff has been assigned specific goals for scheduling oral argument following receipt of pleadings and processing summaries of exceptions and draft decisions after instructions from the Review Board. Both the Review Board and the Office of Opinions and Review will make quarterly reports to the Commission with respect to average processing time for each of the described categories of activities, for the purpose of identifying problem areas. We believe these changes will ultimately help reduce delays which can be attributed to internal procedures.

Conclusion

41. In conclusion, this agency considers administrative delay its most serious current problem. Unwarranted delay constitutes a fundamental disservice to the American public. The rules we have adopted today represent a critically important step in the process of reducing such delay in the Commission's process. These reforms of our adjudicatory procedures should produce a significant reduction in delays, while insuring due process to parties and the public.

42. We recognize that the reforms impose new and additional burdens on the Bar, parties to Commission proceedings, and this agency itself. But we believe these burdens are well worth bearing if they enable us to achieve expedition in our processes, while insuring due process, and thus advance the public interest.

43. We are receptive to new proposals to change our procedures to reduce unwarranted delay, and will continue to be vigilant in monitoring our processes to evaluate the results of these changes as well as to discover other sources of delay which can be eliminated.

44. Because a number of the comments suggested procedural changes other than those set forth in the Notice of Proposed Rulemaking, and we have not dealt with such suggestions in this document, which is limited to changes proposed in the Notice, we intend to keep this docket proceeding open to consider any such proposals at a future date.

45. As a result of these procedural reforms, there will be a reduced workload for the Commission's Review Board. Accordingly, the Commission will assign the newly available staff to other areas of the adjudicatory process where backlogs might develop.

46. Authority for the rules set out in Appendix B is set out in Sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j) and 303(r).

47. Accordingly, It is ordered, effective July 1, 1976. That Parts 0 and 1 of the rules and regulations are amended as set out in Appendix B hereto. Applications, motions, and exceptions pending as of that date will be subject to preexisting rules. Applications filed on or after July 1, 1976, however, which are mutually exclusive with earlier filed proposals will be subject to preexisting rules. Applications (not mutually exclusive with applications filed prior to July 1, 1976), motions and exceptions filed on or after that date shall be subject to the appended rules. Applications for review of action on a motion filed prior to July 1, 1976 will be subject to the preexisting rules.

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

Adopted: March 17, 1976.

Released: April 2, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

List of New Rule Sections

Section I
- 0.288(w)
- 1.93
- 1.94
- 1.95
- 1.248(c)(7)

Section II and III
- None

Section IV
- 1.223 (b) and (c)
- 1.248 (a) and (b)(1)
- 1.311(c)(1)
- 1.522 (a) and (b)
- 1.584

Section V
- 0.161
- 0.341(a)(2)
- 0.361(a)
- 1.115(e)
- 1.229
- 1.243 (j) and (k)
- 1.291(a)(2)
- 1.298(b)
- 1.301 (b) and (c) (1), (5), (6), and (7)

Section VI
- 1.248(d)
- 1.321(d)(3)

Section VII
- 1.267(a)

Section VIII and IX
- 1.276(a)
- 1.277 (a), (b), and (c)
- 1.282(b)(2)

Section X
- 0.371(h)
- 1.104(a)
- 1.115 (b) (2) and (5) and (f)

Section XI
- 1.46(a)
- 1.48(b)

1. Section 0.161 is revised to read as follows:

§ 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, and performs such additional duties not inconsistent with these functions as may be assigned to it by the Commission.

2. Section 0.288(w) is added, to read as follows:

§ 0.288 Authority delegated.

* * * * *

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

3. In § 0.341, paragraph (2) of paragraph (a) is deleted, and paragraph (3) is redesignated paragraph (2), to read as follows:

§ 0.341 Authority of Administrative Law Judge.

(a) * * *

(2) Those which are to be acted upon by the Chief Administrative Law Judge under §0.351.

* * * * *

4. Section 0.361(a) is revised to read as follows:

§ 0.361 General Authority.

(a) The Review Board is a permanent body with continuing functions. The main function of the Board is to review matters referred to it by the Commission in hearing proceedings. The hearing matters referred to the Board on a regular basis are listed in § 0.365. Other hearing matters may be referred to the Board for review on a case by case basis, either at the time of designation for hearing or upon consideration of exceptions. The Commission may, from time to time, assign the Board additional duties not inconsistent with these functions.

* * * * *

§ 0.365 [Amended]

5. In § 0.365, paragraphs (b) and (c) are deleted and reserved.

6. Section 0.371(h) is added, to read as follows:

§ 0.371 Authority delegated.

* * * * *

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

7. Section 1.46(a) is revised to read as follows:

§ 1.46 Motions for extension of time.

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

* * * * *

8. Section 1.48(b) is revised to read as follows:

§ 1.48 Length of pleadings.

* * * * *

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

9. Sections 1.93–1.95 are added, to read as follows:

§ 1.93 Consent orders.

(a) As used in this subpart, a "consent order" is a formal decree accepting an agreement between a party to an adjudicatory hearing proceeding held to determine whether that party has violated statutes or Commission rules or policies and the appropriate operating Bureau, with regard to such party's future compliance with such statutes, rules or policies, and disposing of all issues on which the proceeding was designated for hearing. The order is issued by the officer designated to preside at the hearing 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 the time for review has passed without rejection of the order by the Commission;

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

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

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

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

(g) Consent orders, pleadings relating thereto, and Commission orders with respect thereto shall be served on parties to the proceeding. Public notice will be given of orders issued by an administrative law judge, the Chief Administrative Law Judge, or the Commission. Negotiating papers constitute work product, 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.

9a. Section 1.104(a) is revised, to read as follows:

§ 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 nonhearing 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).

* * * * *

10. In § 1.115, the portion of paragraph (b)(2) preceding subdivision (i) is revised to read as follows; the note following paragraph (b)(4) is deleted; paragraph (b)(5) and a note following paragraph (b)(5) are added to read as follows; paragraph (e) is revised to read as follows; and paragraph (f) is revised to read as follows:

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

* * * * *

(b) * * *

(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:

* * * * *

(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.

NOTE: If the Commission grants an application for review of a final decision of the Review Board, it will generally permit the parties to file briefs and present oral argument. Thus, the application for review should be prepared with the understanding that its purpose is not to obtain a Commission decision on the merits of the issues but rather to convince the Commission to review those issues.

* * * * *

(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 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. 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 ground 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 designation order issued under delegated authority shall be filed within 5 days after the order is released. Oppositions shall be filed within 5 days after the application for review is filed. 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 decisions 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 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.

* * * * *

11. In § 1.223, paragraphs (b) and (c) are revised to read as follows and paragraph (d) is deleted:

§ 1.223 Petitions to Intervene.

* * * * *

(b) Any other 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 hearing issues 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 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 hearing issues 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 the 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.

12. Section 1.229 is revised to read as follows:

§ 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 issues in the hearing have been published in the FEDERAL REGISTER. In comparative broadcast proceedings (including comparative renewal proceedings), however, such motions shall be filed under the predesignation issue framing procedure (see § 1.584) and may not be filed after designation for hearing. 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 such substantial public interest importance as to warrant consideration in spite of its untimely filing.

(d) Such motions, opposition thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof.

13. In § 1.243, paragraph (j) is revised and paragraph (k) is added, to read as follows:

§ 1.243 Authority of presiding officer.

* * * * *

(j) Take actions and make decisions in conformity with the Administrative Procedure Act; and

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

14. In § 1.248 (a) and (b)(1) are revised; (c)(7) is added; and (d) is revised, to read as follows:

§ 1.248 Prehearing conferences; 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 a 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.

* * * * *

(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.

* * * * *

15. Section 1.267(a) is revised to read as follows:

§ 1.267 Initial and recommended decisions.

(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 201–205 of the Communications Act, the presumption shall be that the presiding officer shall prepare an initial or recommended decision. The Secretary will make the decision public immediately and file it in the docket of the case.

* * * * *

16. Section 1.276(a) is revised to read as follows:

§ 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.

* * * * *

17. In § 1.277, paragraphs (a), (b) and (c) are revised to read as follows:

§ 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.

* * * * *

18. In § 1.282, paragraph (b)(2) is revised to read as follows:

§ 1.282 Final decision of the Commission.

* * * * *

(b) * * *

(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

* * * * *

19. Section 1.291(a)(2) is revised to read as follows:

§ 1.291 General provisions.

(a) * * *

(2) The Review Board acts on interlocutory pleadings in proceedings which are before the Board.

* * * * *

20. In § 1.298, paragraph (b) is revised to read as follows and paragraph (c) is deleted:

§ 1.298 Rulings; time for action.

* * * * *

(b) In the 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.

21. In § 1.301, paragraph (b) and paragraphs (1), (5), (6) and (7) of paragraph (c) are revised to read as follows:

§ 1.301 Appeal from presiding officer's adverse ruling; effective date of ruling.

* * * * *

(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. Pleadings 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 an 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 on 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.

* * * * *

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

(6) Appeals are acted on by the Commission.

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

22. Section 1.311(c)(1) is revised to read as follows:

§ 1.311 General.

* * * * *

(c) *Schedule for use of the procedures.* (1) Except as provided in this paragraph, discovery shall be initiated prior to the initial prehearing conference. See § 1.248. 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 or the time to be allowed for such use.

* * * * *

23. Section 1.321(d)(3) is revised to read as follows:

§ 1.321 Use of depositions at the hearing.

* * * * *

(d) * * *

(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.

* * * * *

24. In § 1.522, paragraphs (a) and (b) are revised to read as follows:

§ 1.522 Amendment of applications.

(a) *Predesignation amendment.* (1) Subject to the provisions of §§ 1.525, 1.571(j), 1.572(b), 1.573(b) and 1.580, and except as provided in subparagraph (2) of this paragraph, any application may be amended as a matter of right prior to the adoption date of an order designating such application for hearing, merely by filing the appropriate number of copies of the amendments in question duly executed in accordance with § 1.513. If a petition to deny (or to designate for hearing) has been filed, the amendment shall be served on the petitioner.

(2) Subject to the provisions of §§ 1.525, 1.571(j), 1.572(b), 1.573(b), and 1.580, mutually exclusive broadcast applications may be amended as a matter of right within 30 days after the cutoff date specified for the last-filed application. Subsequent amendments prior to designation of the proceeding for hearing will be considered only upon a showing of good cause for late filing or in response to Commission letters concerning deficiencies in or problems with the application. See §§ 1.65 and 1.514.

(b) *Postdesignation amendment.* (1) Except as provided in Subparagraph (2) of this paragraph, requests to amend an application after it has been designated for hearing will be considered only upon written petition properly served upon the parties of record in accordance with § 1.47 and, where applicable, compliance with the provisions of § 1.525, and will be considered only upon a showing of good cause for late filing. In the case of requests to amend the engineering proposal (other than to make changes with respect to the type of equipment specified), good cause will be considered to have been shown only if, in addition to to the usual good cause consideration, it is demonstrated (1) that the amendment is necessitated by events which the applicant could not reasonably have foreseen (e.g., notification of a new foreign station or loss of transmitter site by condemnation) and (2) that the amendment does not require an enlargement of issues or the addition of new parties to the proceeding.

(2) In comparative broadcast cases (including comparative renewal proceedings), amendments relating to issues first raised in the designation order may be filed as a matter of right within 15 days after that Order is published in the FEDERAL REGISTER.

* * * * *

25. Section 1.584 is added, to read as follows:

§ 1.584 Pleadings to Specify Issues.

Subject to the provisions of §§ 1.522(a), 1.578, 1.580, mutually exclusive applicants, and an applicant for renewal of a broadcast station license against which a competing application has been filed, may submit pleadings to specify issues for hearing against other mutually exclusive or competing applications. Such pleadings shall be filed within 30 days after perfecting amendments to the applications are due (see § 1.522(a)(2)). Pleadings shall contain specific allegations of fact and shall be supported by affidavit of a person or persons with personal knowledge thereof. Pleadings in oppositions to such pleadings to specify issues may be filed within 20 days after the initial predesignation pleadings are due. If there are more than two competing or mutually exclusive applicants, the period for filing pleadings specifying issues shall be 45 days and the period for filing oppositions thereto shall be 30 days. No reply pleadings may be filed.

APPENDIX C.—FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C. 20554

DIRECTIVE IDENTIFICATION

To: The Office of Opinions and Review and The Review Board.

Subject: Changes in Internal Hearing Procedures.

1. *Purpose.* This Administrative Instruction implements Goals and Time Tables for the Office of Opinions and Review and the Review Board as well as changing the format for draft decisions and internal memoranda.

2. *Changes.* Pursuant to the Commission's ongoing re-regulation efforts, the Office of Opinions and Review and the Review Board are instructed to implement the changes in internal procedures set forth below.

Office of Opinions and Review: a. *Discontinue any summarization of pleadings of the parties in draft decisions other than in addressing arguments of the parties.*

b. *Change format of memoranda to Commission to an issue-by-issue analysis.* The present practice of summarizing each of the parties pleadings individually is somewhat confusing to the reader. Instead, a background statement followed by an issue-by-issue analysis of the case is suggested.

c. *Goals and time tables.* The following time periods would be set forth as the goals for the Office of Opinions and Review:

Action on interlocutory applications for review, 45 days.

Action on applications seeking review of final board decision, 45 days.

Action on applications for review of board decisions where review has been granted, 75 days.

Summaries of exceptions prepared for oral argument, 105 days.

Draft decisions following instructions, 45 days.

Petitions for reconsideration, 45 days.

Review by supervising Commissioner, 15 days.

The Office of Opinions and Review would be required to keep data on its processing times and every four months report to the Commission its average processing time for each category of action during the past four months. This would establish deadlines for the Office, and afford Commission scrutiny three times annually to assess improvements or problems in areas of Office responsibilities.

Review board: The Review Board should try to set a date for oral argument, where requested, within 90 days after the filing of the last pleading in response to exceptions, or the Review Board Staff should try to provide summaries of exceptions, where no oral argument will be held within 90 days after the filing of the last pleading in response to exceptions. The goal for draft decisions will be 90 days after instructions from the Board members. Every four months, the Board shall supply the Commission data indicating the average processing time in those categories.

3. *Effective date:* December 15, 1975.

RICHARD E. WILEY,
Chairman.

[FR Doc.76-10097 Filed 4-7-76;8:45 am]

[Docket No. 19528; FCC 76-235]

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

Application for Equipment Registration, Memorandum Opinion and Order

Correction

In FR Doc 76-8311 appearing in the issue for Friday, March 26, 1976, on page 12665, at the top of the second column of the page, the first six lines, which includes the formula, should appear in the first column on the same page following the sentence which reads as follows: "2. Section 68.310 is amended as follows:"

On page 12675, in the first column, the heading which reads, "Voltage Applied for Various Combinations of Electrical Connections" should read "Voltages Applied for Various Combinations of Electrical Connections." Also on page 12675, in the second column paragraph (b)(2), seventh line which reads "tions terminated with 1500 oms, tip to" should read: "tions terminated with 1500 ohms, tip to".

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 75-16; Notice 07]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Air Brake Systems; Correction

In FR Doc. 76-5807, appearing at page 8783 in the issue of Monday, March 1, 1976, an amendment of S5.4.2.2 of Standard No. 121 was incorrectly labeled.

Accordingly, the designation "S4.2.2" is corrected to "S5.4.2.2".

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on April 2, 1976.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.76-10100 Filed 4-7-76;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte Nos. MC-5 and 159]

PART 1003—LIST OF FORMS

Security for the Protection of the Public

At a Session of the Interstate Commerce Commission, the Insurance Board, held at its office in Washington, D.C., on the 26 day of March 1976.

By order of the Commission published on page 10910 of the March 15, 1976 issue of the FEDERAL REGISTER, §§ 1043.2 and 1084.3 of Title 49 of the Code of Federal Regulations were amended to increase the minimum cargo limits of liability for motor common carriers of property and freight forwarders. The increased limits of cargo liability security shall become effective July 1, 1976.

To implement the increased minimum cargo liability limits, Forms BMC 32, prescribed in 49 CFR § 1003.1(b), and FF 32, prescribed in 49 CFR § 1003.3(b) are amended to indicate the higher limits. Forms BMC 32 and FF 32 are the prescribed endorsements for policies of insurance for cargo liability for motor common carriers and freight forwarders respectively. Copies of these forms, as amended, are available upon request from the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

To further implement the increase in cargo liability limits, the prescribed forms for the Motor Common Carrier Cargo Liability Surety Bond, designated as BMC 83 (Rev. 1969), and the Freight Forwarder Cargo Liability Surety Bond, designated as FF 43 (Rev. 1969), are revised and redesignated as BMC 83 (Rev. 1976) and FF 43 (Rev. 1976) respectively. Copies of these forms are also available upon request from the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

It is ordered, That Part 1003 of Chapter X of Title 49 of the Code of Federal Regulations be amended as follows:

1. The listing of Form BMC 83 (Rev. 1969) contained in paragraph (b) of § 1003.1 is amended to read as follows:

§ 1003.1 Motor Carrier and Broker Forms.

* * * * *

(b) Insurance and Surety Bond Forms.

* * * * *

B. M. C. 83 (Rev. 1976)
Motor Common Carrier Cargo Liability Surety Bond

* * * * *

2. The list of Form FF 43 (Rev. 1969) contained in paragraph (b) of § 1003.3 is revised to read as follows:

§ 1003.3 Freight Forwarder Forms.

* * * * *

(b) Insurance and Surety Bond Forms.

* * * * *

FF 43 (Rev. 1976) Freight Forwarder Cargo Liability Surety Bond.

* * * * *

It is further ordered, That this order shall be, and it is, effective July 1, 1976.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, and by filing a copy with the Director, Office of the Federal Register.

(Sec. 215, 49 Stat. 557, as amended, Sec. 403, 56 Stat. 285; 49 U.S.C. 315, 1003)

By the Commission, Insurance Board Board Members Teeple, Schloer, and (vacant).

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.76-10210 Filed 4-8-76;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 33—SPORT FISHING

Tewaukon National Wildlife Refuge

The following special regulation is issued and is effective on April 8, 1976.

§ 33.5 Special Regulations; sport fishing, for individual wildlife refuge areas.

NORTH DAKOTA

TEWAUKON NATIONAL WILDLIFE REFUGE

Sport fishing on the Tewaukon National Wildlife Refuge, Cayuga, North Dakota, is permitted only on the areas designated by signs as open to fishing. These open areas are Lake Tewaukon, Mann Lake and Sprague Lake, comprising 1,440 acres, and are shown on maps available at refuge headquarters and from the office of the Area Manager, U.S. Fish and Wildlife Service, Box 1897, Bismarck, North Dakota 58501. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on Sprague Lake and Mann Lake extends from May 1, 1976 through September 30, 1976, daylight hours only.

(2) The open season for sport fishing on Lake Tewaukon extends from May 1, 1976 through November 20, 1976, daylight hours only.

(3) Access to Lake Tewaukon will be limited to certain designated shoreline areas from October 1, 1976 through November 20, 1976.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through November 20, 1976.

HERBERT G. TROESTER,
Refuge Manager.

MARCH 18, 1976.

[FR Doc.76-10086 Filed 4-7-76;8:45 am]

PART 33—SPORT FISHING

The following special regulation is issued and is effective April 8, 1976.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

LONG LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Long Lake National Wildlife Refuge, Moffit, North Dakota, is permitted in certain refuge waters. These open areas, comprising about 4 miles of shoreline, are delineated on maps available at refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 10597 West 6th Avenue, Denver, Colorado 80215. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for summer sport fishing on the refuge extends from May 1, 1976 to September 30, 1976.

(2) Bank fishing only is allowed.

(3) Fishing is allowed only during daylight hours.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through September 30, 1976.

JAMES W. MATTHEWS,
Refuge Manager.
Arrowwood National Wildlife Refuge.

APRIL 2, 1976.

[FR Doc.76-10106 Filed 4-7-76;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 15539; Amdt. 39-2572]

PART 39—AIRWORTHINESS DIRECTIVES

Alexander Schleicher ASW-17 Gliders

There have been reports of ballast water leaking into the fuselage area at both water ballast system exhausts which are located at the bottom of the fuselage on Alexander Schleicher ASW-17 gliders. The condition has resulted in making the glider tail heavy beyond the approved tolerance and could result in loss of elevator control. Since this condition is likely to exist or develop in other gliders of the same type design, an airworthiness directive is being issued which requires installation and inspection of two hose clamps and, pending this installation, the installation of a placard prohibiting use of the water ballast system on Alexander Schleicher ASW-17 gliders.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

(Sec. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive.

ALEXANDER SCHLEICHER. Applies to Model ASW-17 gliders, Serial Numbers 17001 through 17043, certificated in all categories.

Compliance is required as indicated.

To prevent water ballast from leaking into the fuselage area which could result in a loss of elevator control, accomplish the following:

(a) Before further flight, install a placard in the vicinity of the water ballast system control to read as follows: "USE OF WATER BALLAST SYSTEM PROHIBITED."

(b) Within the next 10 hours time in service after the effective date of this AD, unless already accomplished, comply with the following:

(1) Install a standard 25 mm (1 inch) diameter hose clamp on each of the two polyvinylchloride (PVC) hoses to secure the two PVC hoses to the brass tubes that feed the water ballast exhausts which are located at the bottom of the fuselage behind the landing gear.

(2) Inspect for clamp security by exerting a 10 pound pull on each PVC hose after securing clamps.

(3) Install new clamps in place of those clamps which come loose following the inspection required by paragraph (b)(2) of this AD and inspect the replacement clamps in accordance with paragraph (b)(2) of this AD.

(c) Upon compliance with paragraph (b) of this AD, the placard required by paragraph (a) of this AD may be removed.

This amendment becomes effective April 22, 1976.

Issued in Washington, D.C. on March 30, 1976.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.76-9938 Filed 4-7-76;8:45 am]

[Docket No. 76-CE-14-AD; Amdt. 39-2568]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna Model 421C Airplanes

An Airworthiness Directive (AD) was adopted on March 5, 1976, and made effective immediately by air mail letter to all known owners of certain serial numbers of Cessna Model 421C airplanes. This AD was issued because P/N S1129-3-0304 hose assemblies may be routed dangerously close to the exhaust system in the right hand engine nacelle which could cause heat damage and accelerated deterioration of the hose assemblies. Deterioration and failure of the hose assemblies will result in the release of gasoline in the proximity of the exhaust system and can result in a fire in the engine nacelle. In order to prevent this condition, the Directive requires a visual inspection of the hose assembly for deterioration and heat damage and replacement thereof where necessary with a new hose assembly routed to give adequate clearance. It also requires replacement of the hose assembly with a steel line not subject to heat damage and deterioration, which when accomplished obviates the requirement for the visual inspection.

Since it was found that immediate corrective action was required, notice and public procedure hereon were impracticable and contrary to the public interest and good cause existed for making this AD effective immediately to the owners of certain serial numbers of Cessna Model 421C airplanes. These conditions still exist and the AD is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons who did not receive the letter notification.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 C.F.R. 11.89 (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

CESSNA. Applies to Model 421C (Serial Numbers 421C0003 thru 421C0052 (except 421C0008, 421C0017, 421C0019, 421C0026, 421C0039, 421C0045, 421C0046 and 421C0048) airplanes.

Compliance: Required as indicated, unless already accomplished.