

Division, (202) 287-0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: In these communities, there is no reason not to make full limits of coverage available. The entire community is now classified as Zone C. In a Zone C, insurance coverage is available on a voluntary basis as low actuarial nonsubsidized rates. For example, under the Emergency Program in which your community has been participating the rate of a one-story 1-4 family dwelling is \$.40 per \$100 of coverage. Under the Regular Program, to which your community has been converted, the equivalent rate is \$.10 per \$100 coverage. Contents insurance is also available under the Regular Program at low actuarial rates. For example, when all contents are located on the first floor of a residential structure, the premium is \$.15 per \$100 of coverage.

In addition to the less expensive rates, the maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program. For example, a single family residential dwelling now can be insured up to a maximum of \$185,000 coverage for the structure and \$60,000 coverage for contents.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agency or broker serving the eligible community, or from the National Flood Insurance Program.

The effective date of conversion to the Regular Program would not appear in the Code of Federal Regulations except for the page number of this entry in the Federal Register.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the director, Federal Emergency Management Agency, hereby certifies that this rule is promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice regarding the completed stage of engineering tasks in delineating the special flood hazard areas of the specified community and imposes no new requirements or regulations on participating communities.

List of subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The entry reads as follows:

§ 65.8 List of communities with no special flood hazard areas.

State	County	Community	Date of conversion to regular program
New York.....	Chautauque..	Village of Brocton.	Oct. 29, 1982.
New York.....	Chautauque..	Town of Ripley.	Do.
Texas.....	Cameron.....	Town of Primera.	Do.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: October 20, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-31407 Filed 11-17-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 82-450]

Discovery Procedures in Adjudicatory Hearings

AGENCY: Federal Communications Commission.

ACTION: Final rule (Memorandum Opinion and Order).

SUMMARY: Action taken herein amends Part 1 of the Federal Communications Commission's Rules of Practice and Procedure to provide that discovery in all adjudicatory hearing cases may be initiated either before or after the initial pre-hearing conference; to authorize the use of recorded depositions where approved by the Presiding Administrative Law Judge; and to authorize the Presiding Judge to issue subpoenas for the production of documents from non-parties to Commission proceedings without requiring an accompanying deposition. The rules were amended in order to further reduce the time and resources now devoted to discovery procedures.

DATE: Effective December 10, 1982.

FOR FURTHER INFORMATION CONTACT: David Silberman, Counsel, Office of General Counsel (202) 832-7112.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

In the matter of amendment of Part 1, Rules of Practice and Procedure, to provide for certain changes in the Commission's discovery procedures in adjudicatory hearings; Memorandum Opinion and Order.

Adopted: October 21, 1982.

Released: November 10, 1982.

1. The Commission has under consideration a "Report on Evaluation of the Federal Communications Commission's Discovery Procedures in Adjudicatory Hearings" (hereafter Report).¹ We have found it extremely helpful in our reevaluation of the discovery process. As a result of this review, we have carefully considered the Report and its recommendations and have concluded that the existing discovery rules are basically sound and effective and should be retained, but that three of them should be amended.² The other rules are not being changed at this time because we are not persuaded that they need to be changed in order to accomplish the original goals of the rules, namely, to make adjudicatory hearings both shorter and more productive. See Report and Order on Discovery Procedures, 11 FCC 2d 185 (1968).

2. In order to understand why we are changing some of our discovery rules and not others, we will first review the existing rules and then summarize the Report. After that, we will discuss the changes we are making. Finally, we will review the other recommendations made in the Report and explain why we are not adopting them.

The Commission's Existing Discovery Rules

3. The Commission's very broad and general discovery rules are derived in part from the Federal Rules of Civil Procedure, which provide for both discovery and the production and preservation of evidence. See Report and Order on Discovery Procedures, *supra*. Section 1.246, entitled "Admission of Facts and Genuineness of Documents," contains a procedure for reaching agreement on the issues prior to hearing. The *Jencks* rule (*Jencks v. United States*, 353 U.S. 657 (1957)) is codified in Section 1.362, which provides

¹ The 96 page report was prepared by Max D. Paglin, Esquire, under contract to the Commission, and was submitted on October 30, 1980. Copies of the report are available for public inspection in our library, Room 639, 1919 M Street, N.W., during normal business hours. Copies are also available for a fee from the Commission's commercial contractor for photocopying.

² The new rules are set forth in the attached appendix.

for the production of statements by witnesses. Procedures governing discovery and the production and preservation of evidence for use at the hearing are found in §§ 1.311 through 1.325.³ Sections 1.311 and 1.313 apply generally to the various discovery procedures available. Sections 1.315–1.319 govern the taking of depositions, and § 1.323 provides for their use at the hearing. Section 1.323 applies to interrogatories to parties to be answered in writing. Section 1.325 provides for the production of documents and things. Commission records are not subject to discovery under § 1.325, but may be available under the Freedom of Information Act (5 U.S.C. 552) and pertinent Commission rules (Sections 0.451–0.467). Collateral subpoena procedures are provided for in § 1.333.

4. In general, the scope of discovery in adjudicatory hearings is regulated on a flexible, case by case basis. Notable exceptions to the flexible approach pervading the discovery rules are the requirement of "relevancy" to specified issues and certain privileged information. Section 1.311. The Commission has placed responsibility for applying the discovery rules primarily upon the presiding administrative law judge, who has broad authority to supervise the use of discovery procedures and the power, by use of protective orders (see § 1.313), "to preclude any use, or particular uses, of these procedures in a particular case if he finds that their use will not contribute to the proper conduct of the [hearing] * * *." *Report and Order on Discovery Procedures*, supra at 187. See *Faith Center, Inc.*, 82 FCC 2d 1 (1980), reconsideration denied, FCC 81–235, released May 12, 1981, affirmed per curiam, 679 F.2d 261 (D.C. Cir. 1982); *Chronicle Broadcasting Co.*, 20 FCC 2d 774 (1969). Neither the Commission nor the Review Board will upset a discovery ruling of a judge absent a strong showing that the ruling is arbitrary, capricious, fundamentally in error or is in disregard of the rights of the parties. See, e.g., *Sumiton Broadcasting Co., Inc.*, 18 FCC 2d 78 (1969); *Florida-Georgia Television Co., Inc.*, 14 RR 2d 365 (1968).

The Report On Evaluation of the Commission's Discovery Procedures

5. The subject Report is based on a lengthy and comprehensive study of the discovery procedures. The purpose of the study was to examine, analyze and evaluate the functioning of the

procedures since they were adopted fourteen years ago to determine whether they had been accomplishing their intended purposes. Much data and information was compiled during the study, including a questionnaire that was sent to Commission attorneys, the administrative law judges, members of the outside bar, and representatives of public interest groups. Based on its analysis of the data, the Report concludes that the current discovery rules are basically sound, but that there are four principal areas which might warrant new approaches and revisions for expediting and simplifying the discovery process. Those areas are:

(a) *Role of the Administrative Law Judges.* The Report recommends enhancing and emphasizing the importance of the judge's role and active participation in, and close supervision of, the discovery process.

(b) *Sanctions.* The Report recommends expanding the nature and scope of the sanctions available to the judge in situations of abuse of, or improper action in connection with, discovery.

(c) *Scope of Discovery.* The Report recommends revising the criteria for the permissible scope of discovery.

(d) *Time Periods.* The Report recommends revising the time periods and forum for commencement and conduct of discovery.

6. The Report emphasizes the role of the presiding judge in the discovery process, and, in general, recommends that the judge should: Supervise the discovery process more closely; issue more prompt and firm rulings on discovery; strictly enforce the time periods imposed by the rules; limit the number and duration of interrogatories and depositions of terminate examination where required; and encourage informal exchanges, admissions, stipulations and resolution of disputes concerning the scope of the issues.

7. A number of specific changes in the Commission's Discovery Rules has been proposed. We have reviewed the proposed rules changes and have decided to adopt three of them. The three changes have to do with commencement of discovery in adjudicatory hearings, the use of recorded depositions in appropriate cases, and the production of documents from non-parties. The other recommended rules changes are not being adopted at this time because, in many cases, the judges now have the authority to take the recommended actions to control the discovery process,

and we do not believe codification of this authority is necessary to ensure its effective use. Basically, we are satisfied that the existing rules are sufficiently flexible to achieve the overall purpose of the rules and to prevent unfairness.

The New Rules

8. First, we have decided to revise § 1.311(c) to provide that discovery in all hearing cases may be initiated either before or after the initial pre-hearing conference provided for in § 1.248 of the Rules. The timing of discovery would depend on the particular facts of each case. Presently, the rule provides that discovery must be initiated before the initial pre-hearing conference, which usually takes place within two months of designation for hearing. This rigid and inflexible rule has proven to be unrealistic, and has been honored more in the breach than in the observance. The proposed change is realistic and sensible, and conforms to the practice now followed in most hearing cases.⁴ However, we wish to emphasize that the permissiveness and desired flexibility of the new rule should not lead parties to believe that they can be dilatory and delay discovery. The judges are urged to take firm control of the discovery process and to encourage the commencement and completion of discovery at an early date.⁵ Abuses of this rule should not be tolerated by the judges, who have the means available under the present rules to prevent and stop abuses.

9. Second, we will amend § 1.318(c) of the Rules by authorizing the permissive use of telephonic and electronically recorded depositions, including videotape, in addition to the methods presently provided for in §§ 1.315 and 1.318–1.321, but only where approved by the presiding judge. As the Report points out, this change would serve the interests of economy, efficiency and expedition. The Commission's processes and the public interest would be protected because the presiding judge would have to approve the procedure. Cf. Sections 1.248(f) and 1.364 of the Rules; *Amendment of Part 1 of Rules*, 69 FCC 2d 1078 (1978).

⁴The Report also recommends the establishing of separate "special conferences" on discovery. We have concluded that this formalization is unnecessary in light of the judges' authority to schedule conferences whenever they would be useful. See para. 17, *infra*.

⁵The judges already have the authority to set dates for the commencement and completion of discovery. That authority will not be upset in the absence of a clear showing of arbitrariness, capriciousness, fundamental error or disregard of the rights of the parties.

³These rules "provide discovery procedures to facilitate preparation for the hearing, eliminate surprise, and promote fairness." 11 FCC 2d at 186.

10. Third, we are also revising § 1.333(b) of the Rules to change the procedure for the production of documents from non-parties to Commission proceedings. The rule is being amended to authorize the presiding judge to issue separate subpoenas for the production of documents from non-parties without requiring an accompanying deposition. The rule presently provides that the only way to obtain documents from non-parties is by issuance of a subpoena *duces tecum* in connection with a deposition notice. It is not necessary in some instances, however, to depose the non-party in order for him to furnish the documents. The present procedure is needlessly cumbersome and expensive and is being changed for those reasons.

The Report's Other Recommendations

11. The Report makes a number of other thoughtful suggestions for changing the discovery rules. Most of the suggestions arise out of what could be characterized as the central theme of the Report, namely, that the administrative law judges should be more intimately involved in the discovery process. We agree with the general view that administrative law judges should take and retain firm control of adjudicatory proceedings, including the discovery process, and we wish to remind all concerned that the judges have "full control over the use of [the discovery] procedures." *Report and Order on Discovery Procedures*, *supra* at 187. As we said when we adopted the discovery rules, "it is within [the judge's] power to preclude any use, or particular uses, of these procedures in a particular case if he finds that their use will not contribute to the proper conduct of the proceeding, and he has adequate authority to prevent use of the procedures for purposes of delay and to prevent the abuse of parties or witnesses." *Id.* We here reaffirm that grant of discretionary power to the judges, and we remind them of their responsibility to exercise firm control of adjudicatory proceedings, including the discovery procedures.⁶

12. Nevertheless, we continue to believe that the existing rules are flexible tools available to all parties to Commission hearings. Viewed in this light, we have carefully examined the Report's various other recommendations and have decided not to adopt them at this time. First, we do not believe it would be sound policy to authorize the judges to order depositions of Commission personnel for purposes of

discovery. § 1.311(b)(2) now provides that Commission personnel may be deposed only by special order of the Commission.⁷ The reasons for this restriction were stated by us in 1968 and are still valid today:⁸

At any one time, there are numerous hearing cases pending before the Commission. A multiplicity of demands on the Commission's limited staff would seriously interfere with its capacity to discharge its regular duties. The Commission is in this respect in a different position from that of private parties, who will normally be called upon to give depositions only in the single case in which they are participating. Furthermore, the written interrogatory may well be the most useful of the several procedural devices, since a party may, in one set of interrogatories, obtain an answer to each of his questions from the person best able to furnish it, without time-consuming questioning to determine in advance the particular staff member who has knowledge of the facts. 11 FCC 2d at 188.

13. Second, it is recommended that we authorize the judges to grant requests by parties for production of non-public Commission records in connection with a party's preparation for hearing. The rules now require such a showing to be made to the Commission, § 1.311(b)(3), and we see no need to change that requirement. The present rule provides for much desired uniformity in this very sensitive area and does not impose an undue hardship or prevent parties from obtaining non-public documents in appropriate cases. See, e.g., *Central Alabama Broadcasters, Inc.*, 70 FCC 2d 1762 (1979). Cf. *NTV Enterprises, Inc.*, 62 FCC 2d 722 (1976).

14. Next, it is suggested that the judges be given the authority to impose a variety of new specific sanctions if parties fail to comply with valid discovery orders. However, we believe that the various sanctions now available to the judges are adequate to prevent or stop abuses of the discovery rules. Moreover, there have not been a significant number of abuses of the discovery rules since they were adopted in 1968. To the contrary, our review of the cases over the years shows that the

⁷ Commission personnel may, of course, be questioned for purposes of discovery by written interrogatories pursuant to § 1.323. However, the rules permit only limited questioning of Commission personnel. See § 1.311(b)(4). That rule, with its limitations, continues to be sound and will not be changed.

⁸ This does not mean that Commission personnel can never be deposed. It simply means that, in order to justify such an unusual deposition, the Commission must order it. This provides for uniformity in this very sensitive area. On the other hand, it does not prevent parties from legitimately discovering facts from Commission personnel in appropriate circumstances, and it does not detract from the otherwise plenary authority of the judges in cases of discovery.

existing rules have worked quite well and that the overwhelming majority of discovery cases involves no abuses at all. Those very few cases where abuses have occurred have resulted in appropriate sanctions being imposed on the violators.⁹

15. We are taking this opportunity to remind all parties to our adjudicatory hearings that abuses of our discovery rules or violations of valid discovery orders will not be tolerated. The judges have had ample authority since 1968 to prevent abuses in the first instance or to stop abuses when they have occurred. The authority of the judges over the discovery procedures has been and continues to be very broad. We encourage them to use the tools that are available¹⁰ to assure the continued vitality, integrity and usefulness of the discovery procedures, and to expedite proceedings to the fullest extent possible.¹¹

16. It is also recommended that § 1.362 be amended to authorize the judges, upon the request of any party, to direct that witness statements be furnished to all parties at an appropriate time prior to the witness' appearance at the hearing. Under existing Commission practice, "the statements of witnesses who will testify are normally made available a week or so prior to commencement of the hearing (if disclosure is requested), although the rules (§ 1.362) require disclosure only after the witness has testified." *Amendment of Part 1 of Rules*, 81 FCC 2d 281, 284 (1980). (Footnote omitted.) But see *Gilmore Broadcasting Corp.*, 69 FCC 2d 2105, 2108 (1978). The compelling reasons for not changing the rule (§ 1.362) were stated by us in a Memorandum Opinion and Order released on September 10, 1980. *Amendment of Part 1 of Rules*, *supra*, 81 FCC 2d 281. There, we said:¹²

It would be difficult to obtain the cooperation of witnesses if we were unable to promise that their statements would be kept confidential until they have testified or are about to testify. In many cases, witnesses cooperate and give testimony, even though they are concerned about the personal

⁹ See *Faith Center, Inc.*, *supra* (television license renewal application dismissed); *Vue-Metrics, Inc.*, 69 FCC 2d 1049 (1978), *affirmed per curiam*, 615 F.2d 1369 (D.C. Cir. 1980) (television construction application dismissed). A non-applicant party could be barred from further participation.

¹⁰ E.g., the authority to compel a party to answer interrogatories (§ 1.323(d)) or the authority to ultimately dismiss an application for failing to comply with a valid order (*Vue-Metrics, supra*).

¹¹ Cf. *Tinker, Inc.*, 4 FCC 2d 372, 374 (1966).

¹² 81 FCC 2d at 285. See also *Walton Broadcasting, Inc.*, 56 FCC 2d 814 (1975); *Chesapeake-Portsmouth Broadcasting Corp.*, 52 FCC 2d 854 (1975).

⁶ Cf. *Equal Employment Opportunity Commission*, 38 FCC 2d 33 (1972).

consequences such as current job security and ability to obtain jobs with other employers. . . . Once they are called to testify, they are sworn and cannot as readily be blamed by the licensee for truthfully answering the questions posed. Absent that protection, testimony would be unobtainable, crippling our investigative process.

Aside from the chilling effect on prospective investigations, the two most important reasons for not disclosing witness statements until the witness has testified, or at least until shortly before he is called to testify, are that the licensee may intimidate the witness, and/or construct a false defense. See *e.g.*, *Chronicle Broadcasting Co.*, 19 FCC 2d 240 (Rev. Bd. 1969).

* * * We believe that the Commission's procedures strike a balance between full disclosure and protection of the interests of parties and witnesses found in judicial and other agency proceedings. Licensees are not inherently more believable than witnesses. Determining the truth is the function of the hearing. Licensee's counsel is fully informed concerning allegations against his client well in advance of designation and is given a list of witnesses interviewed by staff investigators. Thus, counsel is already afforded an opportunity for meaningful investigation of the allegations and preparation for cross-examination. Moreover as a matter of practice the Broadcast Bureau makes witness' statements available prior to hearing * * *

17. It is recommended that we expand the concept of pre-hearing conferences to provide for "special" conferences on discovery. This would give the judge and the parties the opportunity to focus solely on discovery and to expedite the proceeding. This point is well taken, but the change is unnecessary because, at present, discovery is generally discussed (sometimes at great length) at the initial conference. With the current crowded hearing calendars, it would be undesirable to require a further conference, entailing, *inter alia*, the time of the judge, Commission counsel, outside counsel, and a court reporter. If further pre-hearing conferences to discuss discovery or anything else are necessary or desired, the existing rules are sufficiently flexible and allow the judge to order them. See §§ 1.243(f), 1.248 and 1.311(c).¹³ In practice, such conferences are held in many cases and are useful.

18. Next, it is recommended that we eliminate or strictly limit discovery in what is characterized as "routine" comparative cases. However, our experience under the present rules teaches us that discovery is potentially useful in *all* hearing cases, including

apparently "routine" cases, which can easily develop into not-so-routine ones.¹⁴ Besides, if a party abuses or attempts to abuse the discovery procedures, the present rules provide a considerable measure of protection by authorizing protective and other orders. See, *e.g.*, § 1.313; *cf.* *Vue-Metrics, supra*.

19. It is also suggested that we adopt a rule prohibiting the use of information obtained through discovery to support petitions to enlarge issues, unless a persuasive showing can be made that the information so discovered would significantly and decisively affect the outcome of the case. At present, petitions to enlarge based on "new facts or newly discovered facts," including facts obtained through discovery, are presently allowed if filed within fifteen days after such facts are discovered, § 1.229(b).¹⁵ Nevertheless, the Commission's existing policy is to prohibit "the use of discovery to ascertain whether grounds exist for enlargement of the issues." *Report and Order on Discovery Procedures, supra* at 187.¹⁶ The two policies are not necessarily mutually exclusive nor should they be. While it is improper for a party to use the Commission's discovery procedures primarily to obtain information for a petition to enlarge, it is not improper for a party in the course of legitimate discovery to unearth information that is relevant to the public interest and then ask for issues based on that newly disclosed information. The former is an abuse of discovery and is prohibited under our present policy. The latter is permitted under our rules.¹⁷

¹⁴ We have chosen to limit the use of discovery, however, in certain specific types of proceedings in order to expedite the licensing of new services, such as low power television (if lotteries are not eventually utilized), cellular mobile phone systems, and 800 MHz radio. See *Low Power Report and Order*, 47 FR 21468 (1982); *Cellular Communications Systems*, 86 FCC 2d 469, 499 (1981), *procedures modified in part on reconsideration*, 89 FCC 2d 58, 92 (1982); *Second Request and Order*, in the 800 MHz proceeding, 47 FR 41002 (1982); § 22.916(b)(6) of the Commission's Rules.

¹⁵ Late-filed petitions to enlarge are tested under § 1.229(c) of the Rules.

¹⁶ The Commission made clear in 1968 that the scope of discovery would be limited to matters relevant to the specified hearing issues, and that, under no circumstances, would a party be permitted to utilize discovery to ascertain whether there are grounds for enlarging the issues. *Id.*

¹⁷ If a party uncovers information about an applicant's qualifications, in the course of discovery or not, and that party deliberately withholds the information from the Commission, under certain circumstances that could be considered an abuse of the agency's processes. See *Home Service Broadcasting Corp.*, 24 FCC 2d 192, 193 (1970). *Cf.* *James C. Sliger*, 70 FCC 2d 1565, 1571 (1979), *review denied*, FCC 79-548, released July 26, 1979, *affirmed sub nom. Cumberland Broadcasting Corp. v. FCC*, 647 F. 2d 1341 (D.C. Cir. 1980). But see *Gulf Coast Communications, Inc.*, 81 FCC 2d 498 (1980), *recon-*

Stated otherwise, if a petitioner uncovers information about an applicant that is relevant to the public interest and the petitioner presents that information to the Commission in a timely filed petition to enlarge issues, the Commission presently considers the merits of the petition, even if the underlying facts are derived from discovery. See, *e.g.*, *RKO General, Inc.*, 48 FCC 2d 397 (1974). If there are abuses of discovery, they can be corrected by other means available under the existing rules. We see no need for adopting a more stringent test for petitions based on discovery, as the Report recommends, than for untimely petitions, as governed by § 1.229(c).

20. We are also urged to shorten the time periods for notice, oppositions and motions for protective orders in connection with depositions and interrogatories. While there is some merit to this proposal it is not being adopted because the existing time periods are "reasonable." *Report and Order on Discovery Procedures, supra* at 191,¹⁸ and have not been abused. We do not believe the proposed time periods are necessarily more reasonable. In any event, we expect the judges to strictly enforce the time periods imposed by the rules and, if appropriate in any particular case, to impose different time periods.

21. Another recommendation is to eliminate the use of oral depositions of parties or principals in an application, except in renewal and revocation cases, unless a persuasive showing can be made that interrogatories are inadequate. While oral depositions may not be necessary in many cases, we believe that restricting their use by rules is unnecessary and undesirable for several reasons. Under our existing rules, the judges have sufficient authority to limit discovery in appropriate cases. See, *e.g.*, § 1.313(e). This includes affirmatively requiring the parties to elect either interrogatories or depositions, but not both.¹⁹ In addition,

denied, FCC 81R-11, released February 4, 1981, *review denied*, FCC 82-128, released April 16, 1982.

¹⁸ See §§ 1.315(a), (b), 1.316(a), (b), (c), (d), (f).

¹⁹ For example, in the *Destin, Florida FM* broadcast proceeding (BC Docket Nos. 80-273-274), the presiding judge, in his order prior to the pre-hearing conference, said that the parties could use either written interrogatories or take depositions upon oral examination. However, he specifically forbade the use of both interrogatories and depositions in the absence of a persuasive showing that it was essential. *White Sands Broadcasting, Inc.*, FCC 80M-1026, released June 19, 1980. This is an example of the flexibility and discretion accorded to the judges under the existing rules. That flexibility is desirable and will be continued.

¹³ Section 1.311(c), in particular, now provides that, "The presiding officer may at any time order the parties or their attorneys to appear at a conference to consider the proper use of [the discovery] procedures or the time to be allowed for such use." (Emphasis added.)

the present rules provide for protective orders to prevent abuses. Section 1.313. Thus, if a party attempts both depositions and interrogatories, the other party can file a motion for a protective order. If the motion has merit, the party can expect that it will be granted. The flexibility in the existing rules is, in our view, clearly preferable, especially when it is considered that depositions and interrogatories are complementary means of discovery and may be desirable in combination in any given case, including apparently "routine comparative cases."

22. Finally, it is suggested that we authorize the judges to limit the number of interrogatories and depositions to prevent unnecessary, excessive or onerous burdens on parties or witnesses. While there is some merit to this proposal, we have decided not to adopt it. Under our present rules, if a party files an unduly burdensome number of interrogatories, the judge has the authority to issue a protective order to curb the abuse. Cf. *J.B. Broadcasting of Baltimore, Ltd.*, 70 FCC 217 (1979).

Conclusion

23. In conclusion, the Report has been helpful to us in our assessment of the discovery rules. The Report demonstrates that our discovery rules in general are adequate and have worked well in the past. The rules, which are widely used, have met our initial expectations and goals of facilitating preparation for the hearing, promoting fairness, and expediting and improving the decision-making process. See *Report and Order on Discovery Procedures*, *supra*. No widespread or profound failings are disclosed in the scope, availability or implementation of the discovery procedures. Moreover, discovery frequently provides evidence that would not otherwise be available to the parties and thereby makes for a fairer hearing. Therefore, we have decided to retain the existing rules and to make only minor changes. This does not mean that we are unwilling to revise our rules when necessary. It simply means that we are basically satisfied with the operation of the existing discovery rules. It goes without saying that we expect the judges to vigorously exercise their authority to control and regulate Commission hearings. Section 1.243(f). See *Equal Employment Opportunity Commission, supra; Selma Television, Inc.*, 3 FCC 2d 63 (1965). We also encourage the parties to cooperate in the discovery process. It is expected that all the parties to our hearings will respect and adhere to our rules and not abuse them.

24. A statement we made in a different context several years ago is relevant here:

It is commendable for (an administrative law judge) to exercise firm control of the course and conduct of a proceeding and to adopt such innovations in procedure as are consistent with the statutes, the Rules of the Commission, the rights of the parties, and adapted to achieve expedition of proceedings, the full disclosure of facts and the attainment of justice. *Tinker, Inc., supra*, 4 FCC 2d at 374.

25. Authority for the amendments set out in the attached Appendix is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Because the amendments are procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 do not apply.²⁰ The amendments will be effective thirty days from the release date of this order.

Accordingly, it is ordered, that effective December 10, 1982, §§ 1.311(c), 1.318(c), and 1.333(b) of the Commission's Rules are amended, as set forth in the attached Appendix.²¹

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

Federal Communications Commission.²²

William J. Tricarico,

Secretary.

Appendix

Title 47 of the Code of Federal Regulations, Part 1, is amended as follows:

PART 1—[AMENDED]

Section 1.311 is amended by revising paragraph (c) to read as follows:

§ 1.311 General.

(c) *Schedule for use of the procedures.* (1) Except as provided by special order of the presiding officer, discovery may be initiated before or after the prehearing conference provided for in § 1.248(a)(1). The presiding officer may at any time order the parties or their

²⁰ Section 1.412(b)(5) of the Rules provides that, "Rule changes (including adoption, amendment, or repeal of a rule or rules) relating to [Commission procedures or practice] will ordinarily be adopted without prior notice. . . ." In this case, we are making only minor changes in procedural rules with the assistance of a carefully written report prepared after much deliberation and study. Therefore, there is no need to institute a rulemaking proceeding before acting on the Report's various recommendations.

²¹ In cases already designated for hearing prior to the date the rules are effective, the presiding judge should allow or disallow the use of the various amended procedures in the interest of fairness and orderly procedure.

²² Commissioner Rivera absent.

attorneys to appear at a conference to consider the proper use of these procedures or the time to be allowed for such use.

Section 1.318 is amended by revising paragraph (c) to read as follows:

§ 1.318 The taking of depositions.

(c) *Oath; transcript.* The officer before whom the deposition is to be taken shall administer an oath or affirmation to the witness and shall personally, or by someone acting under his direction and in his presence record the testimony of the witness. The testimony may be taken stenographically or, upon approval by the presiding officer, testimony may be taken through the use of telephonically or electronically recorded methods, including videotape. In the event these latter methods are used for the deposition, the parties may agree to the waiver of the provisions of paragraphs (e) and (f) as appropriate and as approved by the presiding officer.

Section 1.333 is amended by revising paragraph (b) to read as follows:

§ 1.333 Requests for issuance of subpoena.

(b) Requests for a subpoena *duces tecum* shall be submitted in writing, duly subscribed and verified, and shall specify with particularity the books, papers, and documents desired and the facts expected to be proved thereby. Where the subpoena *duces tecum* request is directed to a nonparty to the proceeding, the presiding officer may issue the same, upon request, without an accompanying subpoena to enforce a notice to take depositions, provided for in paragraph (e) of this section, where it appears that the testimony of said person is not required in connection with the subpoena *duces tecum*.

[FR Doc. 82-31515 Filed 11-17-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 2

[RM-3855; FCC 82-469]

Use of Certain Frequencies in the Amateur Radio Service on a Secondary, Non-Interference Basis

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an Order amending the rules to make

the frequencies 10.100-10.150 MHz (the 30 meter band) available to amateur radio operators in the United States for a temporary period on a secondary, non-interference basis. This action is necessary to permit amateur radio operators in the United States to continue to fully communicate with the world amateur community and furthers the policies of both 1979 World Administrative Radio Conference and the United States in this regard.

EFFECTIVE DATE: October 28, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Special Services Division, (202) 632-7197.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

In the matter of amendment of Part 2 of the Commission's rules to permit use of the frequencies 10.100 MHz through 10.150 MHz in the Amateur Radio Service on a secondary, non-interference basis; Order.

Adopted: October 28, 1992.

Released: October 28, 1982.

1. We have before us for consideration a request by the American Radio Relay League, Inc., (ARRL) to authorize immediate, temporary use of the frequencies 10.100 MHz through 10.150 MHz in the Amateur Radio Service on a secondary, non-interference basis pending official action by the United States and the Commission on the Final Acts of the World Administrative Radio Conference held at Geneva, Switzerland, in 1979 (WARC-79).¹

2. The Final Acts of the 1979 World Administrative Radio Conference, allocated, *inter alia*, the frequencies 10.100 to 10.150 MHz to the Amateur Radio Service, secondary to Fixed Services. This action was consistent with United States proposals to allocate these frequencies exclusively to the Amateur Radio Service worldwide. The provisions of the Final Acts, unless otherwise provided therein, went into effect January 1, 1982, in countries which have implemented the Final Acts. Thus, many countries now permit licensed amateur radio operators in their respective jurisdictions to utilize the 30 meter band on a secondary, non-interference basis.²

3. The United States has not yet completed the ratification process for the Final Acts of WARC-79. In 1980 we initiated, and presently have under study, a series of Notices of Inquiry, FCC General Docket No. 80-739, looking toward implementation of the Final Acts of WARC-79. Among the issues addressed in the First Notice of Inquiry was the allocation of the frequencies in the band 10.100-10.150 MHz to the Amateur Radio Service on a secondary, non-interference basis to the Fixed Service operating outside the United States and its possessions, following ratification of the Final Acts of WARC-79.

4. Amateur radio operators have expressed a strong interest in the early availability of this band. The ARRL, in Comments filed in response to the First Notice of Inquiry in Docket No. 80-739, stated that the new allocation at 10 MHz was intended to help bridge the gap between the bands presently available to them at 7 and 14 MHz. The propagation characteristics of the 30 meter frequency band would, they contend, better equip amateur radio operators to fulfill their public service obligation to foster international goodwill, and enhance amateur radio operators' ability to provide reliable, voluntary noncommercial communications. No commenters have objected to the proposal.

5. Although the ratification process for the Final Acts of WARC-79 is not yet complete, we believe that the public interest supports amendment of our rules to allow amateur operators in the United States temporary use of the frequencies 10.100-10.109 MHz and 10.115-10.150 MHz on a secondary, non-interference basis.³ Such an amendment will permit amateur operators located in the United States to continue to fully communicate with the world amateur community and furthers both WARC-79 and United States policy in this regard.

6. Our action allowing amateur radio operators temporary access to this band will, of necessity, be subject to final action by the United States on the Final Acts of WARC-79, and will also be subject to Commission rule making

proceedings to implement the treaty provisions. Thus, amateur radio operators availing themselves of opportunities created by this amendment are cautioned that the amendment may be effective for only a brief period, and that official action by the United States and the Commission regarding the Final Acts of WARC-79 will ultimately determine the parameters within which we may act in relation to use of the 30 meter band in the Amateur Radio Service.⁴

7. Given the limited size of the 30 meter band and the temporary nature of this authorization, we will limit application of this amendment to General, Advanced or Amateur Extra Class amateur radio operators using A1 or F1 (including A2J) emissions.

8. Because this rule amendment is temporary in nature, is unlikely to be controversial, and furthers the public interest objectives cited above, we conclude that good cause has been shown that compliance with the notice and comment provisions of Section 553 of the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b)(3).

9. Accordingly, it is ordered, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that § 2.106 of the Commission's Rule (47 CFR 2.106) is amended to permit temporary use of the frequencies 10.100-10.109 MHz and 10.115-10.150 MHz in the Amateur Radio Service. It is further ordered, that such use shall be limited to operation by amateur radio licensees holding General, Advanced or Amateur Extra Class operator licenses; that such operation shall be limited to A1 and F1 (including A2J) emissions on a secondary, non-interference basis; and that in such operation the power input to the transmitter final amplifying stage supplying radio frequency energy to the antenna shall not exceed 250 watts, exclusive of power for heating the cathode of a vacuum tube(s). This amendment shall remain in effect pending final action by the United States and the Commission upon the Final Acts of the World Administrative Radio Conference held at Geneva, Switzerland, in 1979.

10. It is further ordered that the American Radio Relay League's Application for Review of action by delegated authority in RM-3855 is dismissed because the relief sought

ARRL represents that 39 countries now allow their amateur radio operators to use the 30 meter band, with others to join the list shortly.

¹ITU Radio Regulations permit the use of frequencies inconsistent with the ITU Table of Frequency Allocations "... on the express condition that harmful interference shall not be caused to services carried on by stations operating in accordance with the provisions of the Convention and of these Regulations." ITU Radio Regulation No. 115, Geneva, 1959.

²The frequency band 10.109-10.115 MHz must be reserved for ongoing government operations.

¹The frequencies between 10.100 MHz and 10.150 MHz are commonly referred to in the amateur community as the 30 meter band.

²In its Application for Review of action taken under delegated authority to dismiss RM-3855, the

³Therefore, amateur radio operators in the United States would, at this time, be ill-advised to invest heavily in equipment which can only be used for this frequency band.

therein has been, effectively, granted by this Order.

11. It is further ordered that, because this rule change operates to relieve a restriction, and because immediate implementation has been requested by those subject to its provisions, it shall be effective, October 28, 1982. See 5 U.S.C. 553d (1), (3).

12. For further information about this proceeding contact John J. Borkowski, Private Radio Bureau, Special Services Division, Personal Radio Branch, at (202) 632-7197.

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

Federal Communications Commission. *

William J. Tricarico,

Secretary.

Appendix

PART 2—[AMENDED]

Part 2 of the Commission's Rules is amended as set forth below:

§ 2.106 [Amended]

Section 2.106 is amended by adding the footnote designation: "(US 295)" to column 6 of the line beginning: "10100-11175 kHz," and by adding a new footnote at the end of the section to read:

* * * * *

US 295. The frequencies in the bands 10.100 to 10.109 MHz and 10.115 to 10.150 MHz may be used in the Amateur Radio Service pending action by the United States and the Federal Communications Commission upon the Final Acts of the World Administrative Radio Conference held at Geneva, Switzerland, in 1979, provided that such use shall be limited to operation by amateur radio licensees holding General, Advanced or Amateur Extra Class operator licenses; and further provided that such operation shall be limited to A1 and F1 (including A2) emissions on a secondary, non-interference basis; and that in such operation the power input to the transmitter final amplifying stage supplying radio frequency energy to the antenna shall not exceed 250 watts, exclusive of power for heating the cathode of a vacuum tube(s).

[FR Doc. 82-31506 Filed 11-17-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2, 21, 22, 81, 87, 90, and 95

[Gen. Docket No. 82-181; RM-3248; FCC 82-486]

Additional Spectrum Between 72 and 76 MHz for Radio Control of Model Aircraft, Boats, Cars, and Other Similar Devices

AGENCY: Federal Communications Commission.

* Commissioner Rivera absent.

ACTION: Final rule.

SUMMARY: The Commission has adopted changes in its rules to allow radio control of model aircraft, boats, cars and other devices on additional radio frequencies in the 72 to 76 MHz band. This action was requested by the Academy for Model Aeronautics and was supported by other radio control modeler groups. The new rules makes 50 channels available for model aircraft only and 30 channels available for surface model (cars, boats) only. Operation on the existing seven model radio control frequencies in the 72 to 76 MHz band must cease five years after the effective date of the new rules.

EFFECTIVE DATE: December 20, 1982.

FOR FURTHER INFORMATION CONTACT: James Vorhies, (202) 653-9097.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocation, Radio communications equipment, Radio control, Personal radio.

47 CFR Part 21

Communications common carrier, Microwave radio.

47 CFR Part 22

Communications common carriers, Mobile radio.

47 CFR Part 81

Marine safety.

47 CFR Part 87

Air transportation.

47 CFR Part 90

Industrial radio services, Land transportation radio services.

47 CFR Part 95

Personal radio.

In the matter of amendment of Parts 2, 21, 22, 81, 87, 90 and 95 of the Commission's rules to provide additional spectrum between 72 and 76 MHz for the radio control of model aircraft, boats, cars and other similar devices; Report and Order.

Adopted: November 4, 1982.

Released: November 9, 1982.

Introduction

1. On April 1, 1982 the Commission adopted a Notice of Proposed Rulemaking (Notice ¹) in Docket 82-181

¹ Notice of Proposed Rulemaking in General Docket No. 82-181, adopted April 1, 1982, Released April 13, 1982 (47 FR 19187, 4 May 82).

to amend Parts 2, 21, 22, 81, 87, 90 and 95 of the Commission's Rules to provide additional radio channels for the radio control of model aircraft, boats and cars. This Notice was issued in response to a petition (RM-3248) from the Academy of Model Aeronautics Inc. (Academy) (November 17, 1978) requesting that the Commission provide additional spectrum for the radio control (R/C) of models. The Academy stated in its petition that additional spectrum is needed in order to cope with anticipated expansion in model activities during the next ten years, and to compensate for diminished use of six existing frequencies allocated to radio control between 26.96 and 27.41 MHz,² which the Academy claims are nearly useless for radio control operations because of interference from the Citizens Band Radio Service which is also authorized in this band.

2. The only other spectrum currently available to the Radio Control Service is seven channels in the 72-76 MHz band; however, this use is secondary to operational fixed stations in the Industrial, Land Transportation and Public Safety Services as well as to low power land mobile stations in the Manufacturers Radio and Special Industrial Services. According to the Academy, in some cities, such as Houston, Texas and Tampa, Florida, only a few of the seven channels are available due to interference from high-power fixed station operations and this availability is expected to further diminish because the use of this spectrum by these other services is growing.

3. In the United States, the band segments 72.0-73.0 MHz and 75.4-76.0 MHz (the 72-76 MHz band) are currently allocated on a primary basis to the non-Government Fixed Service.³ In this band, a 20 kHz channeling plan, which begins at 72.02 MHz and proceeds to 72.98 MHz and then from 75.60 through 75.98 MHz (referred to later herein as "even" channels), has been established. These 72-76 MHz channels are predominantly used by licensees in the private and common carrier radio services for control of remote transmitters operating in the 30-50 MHz, 152-162 MHz or 450-470 MHz bands, which provide dispatch and paging services. It is likely that there will be an increasing demand for 72-76 MHz transmitter control links for the land mobile service to replace more

² These are 26.995, 27.045, 27.095, 27.145, 27.195, 27.255 MHz. The latter frequency is shared with other services.

³ Section § 2.106 of the Commission's Rules.