Investigation. The Department has decided that it would be more efficient to have the Administrator of the DEA report directly to the Attorney General, through the Deputy Attorney General or the Associate Attorney General. This amendment will ensure that the Department's regulations accurately reflect the internal management structure of the Department.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12991, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Therefore, by virtue of the authority vested in me, including 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3521, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 873, 881(d), 883, 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001–2017p; Public Law 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.102 is revised to read as follows:

§ 0.102 Drug enforcement policy coordination.

The Administrator of the Drug Enforcement Administration shall report to the Attorney General, through the Deputy Attorney General or the Associate Attorney General, as directed by the Attorney General.

Dated: July 6, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90–16462 Filed 7–13–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

43 CFR Part 17

RIN 1091–AA03

Federally Assisted Programs or Activities of the Department of the Interior, Nondiscrimination on the Basis of Handicap

AGENCY: Department of the Interior (DOI).

ACTION: Final rule.

SUMMARY: This rule amends the regulation issued by DOI for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

EFFECTIVE DATE: August 15, 1990.

ADDRESSES: Copies of this notice are available on tapes for persons with impaired vision. They may be obtained from the Office for Equal Opportunity, Room 1324, Main Interior Building, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Melvin C. Fowler at (202) 208–3455 (voice) or 208–3434 (voice/TDD). These numbers are not toll free numbers.

SUPPLEMENTARY INFORMATION: On May 1, 1989 (54 FR 18554), DOI published a proposed rule that would amend its existing regulation for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to UFAS. All comments received by DOI were reviewed and considered, and are discussed in this document. After carefully considering these comments, DOI decided to adopt the rule as final.

Background

Section 504 (29 U.S.C. 794) provides in part that

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

DOI's current section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It states that new construction, addition or alteration must be accomplished in accordance with the Minimum Guidelines and Requirements for Accessible Design, issued by the Architectural and Transportation Barriers Compliance Board (ATBCB). The revision set forth in this document will reference UFAS, which is consistent with the ATBCB's guidelines.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31538(see discussion *infra*)). The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations or more than one Federal agency.

Background of Accessibility Standards

The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and Housing and Urban Development, and the United States Postal Service) to prescribe the accessibility standards. Section 502(b)(7) of the Rehabilitation Act of 1973, as amended, directed the Architectural and Transportation Barriers Compliance Board (ATBCB) to issue minimum guidelines and requirements for these standards 29

U.S.C. 792(b)(7). The guidelines [1] now in effect are found at 36 CFR part 1190.[2]

In 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among their Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 41 CFR Subpart 101–19.6 and 24 CFR part 40, respectively). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1–1980. ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. The original ANSI A117.1 was adopted in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1–1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

The final rule amends the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from DOI to refer to UFAS.

DOI has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Some facilities may be covered by both section 504 and the Architectural Barriers Act. Nothing in this rule relieves recipients whose facilities are covered by the Barriers Act and that Act's implementing regulations from complying with the requirements of UFAS or any other Barriers Act standard or requirements that may be in effect.

[1] The minimum guidelines were established on August 4, 1982 (47 FR 33864), and amended on September 14, 1988 (53 FR 35510), February 3, 1989 (54 FR 5444), and August 23, 1989 (54 FR 34977).

[2] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 1111 18th Street, NW., Suite 500, Washington, DC 20036. The telephone number is (202) 653–7834 [voice/TDD]. This is not a toll free number.

Effect of Amendment

One comment expressed concern over maintaining the use of the term "facilities" rather than the term "buildings." DOI's current section 504 rule requires that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment does not affect these requirements but merely provides that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS section 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," DOI anticipates that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360 degree turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient bedrooms be accessible (see UFAS section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all beds in the facility to be accessible to individuals with handicaps. The result is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction

and alterations.[3] Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

One comment expressed concern about the deletion of the term "additions" from the accessibility requirements. UFAS contains specific requirements for additions to existing buildings (see UFAS section 4.1.5). The amendment references UFAS only for "design, new construction, or alteration of buildings," and does not mention additions specifically. For purposes of section 504, an addition is considered "new construction" or "alteration." Thus, the absence of a reference to additions in the rule should not be read to exempt additions from the accessibility requirements.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with GSA's Barriers Act regulation incorporating UFAS, at 41 CFR subpart 101–19.6.

The revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS 4.1.6, *Accessible Buildings: Alterations.* Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6.(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the amendment provides that, for purposes of this section, section 4.1.6.(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or result in the employment or residence therein of persons with handicaps.

This exception does not apply to a room merely because it contains mechanical equipment. For instance, the exception shall not be read to exempt from the requirements of UFAS a "mechanical room" with a photocopier, control mechanisms and operating equipment for a large heating and air conditioning system, and controls for a security system. Since the room would be frequented by employees, it is not excepted from UFAS. In this case, the control mechanisms, including switches, thermostats, and alarms, used by employees should be on an accessible path and mounted at the proper height.

One comment proposed deleting the revision, "of not requiring construction alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member." DOI has retained this revision. The revision provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

The final rule also revises the definition of "historic properties" in the current regulation in order to conform it to UFAS section 4.1.7.(1)(a). Historic properties under the current regulation are limited to those listed or eligible for listing in the National Register of Historic Places. The special historic preservation section of UFAS applies additionally to buildings and facilities designated as historic under State and local law. One comment was received regarding the revised definition of "Historic properties." This provisions should not be interpreted to broaden the categories of buildings that can be designated as national historic properties, or to affect the process that is followed for buildings that are on the National Register. Rather, it is intended to provide some flexibility with respect to those properties that States and localities have designated as historic.

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ Executive Order 12250 of November 2, 1980. The ATBCB has been consulted in the development of this document in accordance with 28 CFR 41.7.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the Federal government to anticipate and reduce the effect of rules and paperwork requirements on small entities. The Department of the Interior hereby certifies that this action will not have a significant economic impact on a substantial number of small entities because it merely substitutes DOI's current standard with UFAS which is already required throughout the Federal government.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined as a rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it promotes governmentwide consistency and minimizes potential recipient compliance conflicts by incorporating UFAS in place of DOI's standard.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

Since this regulation is administrative, legal, and procedural in nature it is categorically excluded from the National Environmental Policy Act Process. *See* 516 DM 2, Appendix 1.

Authorship Statement

The principal author of this rulemaking document is Melvin C. Fowler, Supervisory, Equal Opportunity Specialist, Federal Assistance Programs Staff, Office for Equal Opportunity, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 17

Blind, Buildings, Civil rights, Color, Employment, Equal employment opportunity, Federal assistance, Grant

[3] This will be the case even if UFAS is revised to be consistent with the 1988 amendment to the ATBCB minimum guidelines to provide minimum guidelines and requirements for accessible leased facilities. On September 14, 1988 (53 FR 35510), the ATBCB amended its minimum guidelines to establish requirements for standards for buildings leased by the Federal Government. 36 CFR 1190.34 (1989). The requirements apply to leased buildings even if they are not altered. Section 1190.34(a) requires that any building or facility that is to be leased by the Federal Government, without having been designed or constructed in accordance with its specifications, comply with the standards for new construction (§ 1190.31), incorporate the features listed in the standards for alterations (§ 1190.33(c)), or, if no such space is available, be altered to include certain accessible elements and spaces. These requirements will be incorporated into UFAS and will apply to buildings covered by the Architectural Barriers Act. However, existing buildings leased by recipients are not covered by the Act unless the buildings are to be altered.

programs, Handicapped, Historic preservation, Loan programs, National origin, Nondiscrimination, Race.

For the reasons set forth in the preamble, 43 CFR part 17 is amended as follows:

PART 17—[AMENDED]

1. The authority citation for part 17, subpart B, is revised to read as follows:

Authority: 29 U.S.C. 794.

2. Section 17.218, paragraph (c) is revised to read as follows:

§ 17.218 New construction.

* * * * *

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of August 15, 1990, design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

3. Section 17.260, "Historic preservation programs," is amended by revising the definition of "Historic properties" in paragraph (a) to read as follows:

§ 17.260 Historic preservation programs.

(a) *Definitions.*

* * * * *

Historic properties means those buildings or facilities that are listed or eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local governmental body.

* * * * *

Lou Gallegos,

Assistant Secretary, Policy, Management and Budget, Department of the Interior.

[FR Doc. 90–16568 Filed 7–13–90; 8:45 am]

BILLING CODE 4310–RE–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket No. 87–314; FCC 90–191]

Broadcast Service; Abuse of the Commission's Licensing Processes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The instant Report and Order (Report) enacts rules designed to eliminate abuse of the Commission's processes through the improper use of petitions to deny and threats to file such petitions in the context of applications proceedings involving construction permits, modifications, transfers, assignments, and license renewals. Also at issue is abuse in allotment proceedings. Specifically, the Commission: (1) Adopts rules limiting the amount of payment that may be made in exchange for withdrawing petitions to deny or threats to file petitions to deny in new licensing, modification, and transfer and assignment proceedings; (2) undertakes case-by-case review of all citizens' agreements reached in consideration for withdrawing petitions to deny or threats to file petitions to deny in these proceedings, to ensure that they comport with the public interest; (3) clarifies its treatment of programming provisions contained in these agreements; (4) limits the amount and type of consideration that may be paid for the withdrawal of an expression of interest in allotment proceedings to legitimate and prudent expenses incurred in preparing and filing the expression of interest; and (5) clarifies its policies concerning expressions of interest in applying for and constructing a station made in allotment proceedings. This Report is part of the Commission's comprehensive effort to eliminate abuse of its processes.

EFFECTIVE DATE: October 4, 1990.

ADDRESSES: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugenia Hull, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 87–314, FCC 90–191, adopted May 10, 1990, and released July 2, 1990.

The complete text of this Report is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. This Report is part of the Commission's effort to eliminate abuse of its processes. This proceeding in particular concerns abuse of the Commission's processes through the improper use of petitions to deny and threats to file such petitions in the context of applications proceedings involving construction permits, modifications, transfers, assignments, and license renewals, and abuse in allotment proceedings. Specifically, the Commission: (1) Adopts rules limiting the amount of payment that may be made in exchange for withdrawing petitions to deny or threats to file petitions to deny in new licensing, modification, and transfer and assignment proceedings; (2) undertakes case-by-case review of all citizens' agreements reached in consideration for withdrawing petitions to deny or threats to file petitions to deny in these proceedings, to ensure that they comport with the public interest; (3) clarifies its treatment of programming provisions contained in these agreements; (4) limits the amount and type of consideration that may be paid for the withdrawal of an expression of interest in allotment proceedings to legitimate and prudent expenses incurred in preparing and filing the expression of interest; and (5) clarifies its policies concerning expressions of interest in applying for and constructing a station made in allotment proceedings. (The Notice of Proposed Rulemaking in this proceeding may be found at 52 FR 35737, September 23, 1987.)

2. The policy revisions and rules set out below, significantly advance our goal of reducing the opportunities, incentives, and mechanisms for abuse of our application processes. By placing limitations on payments that can be made in exchange for withdrawing petitions to deny filed against applications for new construction

permits, modifications, transfers and assignments or in exchange for withdrawing expressions of interest in allotment proceedings, we are extending the limits imposed on petitions in the renewal context to filings in these other contexts. By prohibiting abusive threats to file petitions to deny (those in which money or other improper consideration is demanded in exchange for withdrawing the threat), we are ensuring that abusive practices are not merely shifted to the pre-petition stage. By reviewing citizens' agreements reached in exchange for the withdrawal of a petition or threat to file a petition on a case-by-case basis, we will ensure that these agreements further the public interest.

3. The Commission also clarifies that, consistent with our treatment of citizens' agreements in the renewal context, we will not enforce private contractual agreements related to programming in citizens' agreements reached in settlement of petitions filed in new licensing, modification and transfer and assignment contexts. Our decision not to enforce programming commitments made in citizen's agreements does not diminish our commitment to ensuring that broadcast licensees present programming responsive to the needs of the communities they serve. The renewal process remains the appropriate setting in which to assert that a licensee has failed adequately to serve those community needs.

4. Finally, based on the record compiled in response to the Notice of Proposed Rulemaking and on our experience, the Commission concludes that there is significant potential for abuse of the allotment process. Therefore, we are limiting the amount and type of consideration that may be paid for the withdrawal of an expression of interest to legitimate and prudent expenses incurred in preparing and filing the expression of interest. As an additional safeguard against abuse, we are also clarifying our policies concerning expressions of interest in applying for and constructing a station made in allotment proceedings. Currently, parties are required to include an expression of interest in applying for, constructing, and operating the proposed facility if the allotment is made. While we have not previously stated a view on this issue, we are of the opinion that these expressions have the status of representations to the Commission, as do any assertions contained in pleadings filed with the Commission. Thus, a statement of interest in operating a station made by a party who, in fact, lacks the requisite intent to construct and operate the proposed facility will henceforth be considered a material misrepresentation within the meaning of § 73.1015 of the Commission's Rules, and would be subject to prosecution pursuant to section 502 of the Communications Act of 1934, as amended, forfeiture pursuant to section 503 of the Act or other appropriate administrative sanctions.

5. However, we also wish to ensure that a charge of misrepresentation is raised and treated as a serious matter. The mere fact that a party in one proceeding files a pleading in which it states an interest in applying for a stations, but subsequently fails to do so, is not sufficient evidence, by itself, of misrepresentation. On the other hand, where there is either direct evidence or misrepresentation, or evidence of a pattern of filings in which a party expresses an interest in an allotment and either voluntarily dismisses its proposal prior to action in the allotment proceeding or fails to file an application, a question may arise as to whether the party is advancing proposals in good faith. Depending on the facts in the case, the Commission may find the intent to deceive necessary for a determination of misrepresentation.

6. In sum, we believe that imposing settlement limitations and sanctioning parties who file without the intent to construct and operate the proposed facility will deter the filing of disingenuous proposals and aid the expeditious resolution of allotment and related cases.

7. In order to enforce our policies regarding petitions to deny, threats to file petitions to deny and citizens' agreements, we are adopting the following disclosure and certification requirements. Where a petitioner to deny seeks to dismiss a petition filed against an application for a new station or the transfer, assignment or modification of an existing facility, each party to the petition must submit a copy of any written agreement relating to the dismissal and an affidavit: (1) Certifying that it has not received or paid it will not receive or pay any money in exchange for the dismissal of the petition to deny in excess of legitimate and prudent expenses incurred by the petitioner seeking dismissal; (2) disclosing the exact nature and amount of any money or other consideration paid or promised in connection with the dismissal of the petition to deny; and (3) disclosing the terms of any oral agreement related to the dismissal of the petition to deny.

8. Any petitioner seeking reimbursement of expenses under the agreement must also submit an itemized accounting of its expenses incurred in preparing, filing, and prosecuting its petition for which reimbursement is sought. This information is needed to verify the expenses for which the petitioner is seeking reimbursement. We are also adopting similar procedures for withdrawal of expressions of interest in FM and TV allotment proceedings.

Paperwork Reduction Act Statement

9. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Regulatory Flexibility Act Analysis

10. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rules will have a significant impact (both positive and negative) on a substantial number of small entities because of the limitations placed on the amount of payment that may be made in settlement agreements, because of the paperwork involved in verifying that such a settlement payment is justified, and in the risk of prosecution in case of violation of the new rules. However, the Commission believes that its action is warranted by the potential for abuse of its processes, and its action will positively impact on small entities by reducing that potential for abuse, and thus enhancing the fairness of its processes for all possible participants.

11. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

12. Authority for the rule changes adopted in this document is contained in sections (4) (i) and (j), and 301, 303, 308, and 309 of the Communications Act of 1934, as amended.

13. Accordingly, *it is ordered*, that the policies and the amendments to the Commission's Rules and Regulations adopted here and set forth below shall become effective on October 4, 1990.

14. *It is further ordered*, that the Petition of the National Black Media Coalition to accept its late-filed comments IS GRANTED.

15. *It is further ordered*, that this proceeding IS TERMINATED.

List of Subjects

47 CFR Part 1

Radio, Television.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.1015 is amended by revising the introductory text to read as follows:

§ 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission, or, in the case of a proceeding to amend the FM or Television Table of Allotments, require from any person filing an expression of interest, written statements of fact relevant to that allotment proceeding. No applicant, permittee, licensee, or person who files an expression of interest shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

* * * * *

3. Section 73.3524 is redesignated as § 73.3588 and the title and paragraphs (a) and (b) introductory text are revised to read as follows:

§ 73.3588 Dismissal of petitions to deny or withdrawal of informal objections.

(a) Whenever a petition to deny or an informal objection has been filed against any application, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

* * * * *

(b) Citizens' agreements. For purposes of this section, citizens agreements include agreements arising whenever a petition to deny or informal objection has been filed against any application and the filing party seeks to dismiss or withdraw the petition or objection in exchange for nonfinancial consideration (*e.g.*, programming, ascertainment or employment initiatives). The parties to such an agreement must file with the Commission a joint request for approval of the agreement, a copy of any written agreement, and an affidavit executed by each party setting forth:

* * * * *

4. A new § 73.3589 is added to read as follows:

§ 73.3589 Threats to file petitions to deny or informal objections.

(a) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny or an informal objection. For the purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector incurred reasonably and directly in preparing to file a petition to deny will not be considered to be payment for refraining from filing a petition to deny or informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement nonfinancial promises are prohibited unless specifically approved by the Commission.

(b) Whenever any payment is made in exchange for withdrawing a threat to file or refraining from filing a petition to deny or informal objection, the licensee must file with the Commission a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) Certification that neither the would-be petitioner, nor any person or organization related to the would-be petitioner, has received or will receive any money or other consideration in connection with the citizens' agreement other than legitimate and prudent expenses reasonably incurred in preparing to file the petition to deny;

(2) Certification that unless such arrangement has been specifically approved by the Commission, neither the would-be petitioner, nor any person or organization related to the would-be petitioner, is or will be involved in carrying out, for a fee, any programming ascertainment, employment or other nonfinancial initiative referred to in the citizens' agreement; and

(3) The terms of any oral agreement.

(c) For purposes of this section:

(1) Affidavits filed pursuant to this section shall be executed by the licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) "Legitimate and prudent expenses" are those expenses reasonably incurred by a would-be petitioner in preparing to file its petition for which reimbursement is being sought.

(3) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

5. Section 73.3584 is amended by revising the heading to read as follows:

§ 73.3584 Procedure for filing petitions to deny.

* * * * *

PART 1—[AMENDED]

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

6. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

§ 1.420 [Amended]

7. Section 1.420 is amended by adding a new paragraph (j) to read as follows:

* * * * *

(j) Whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) A certification that neither the party withdrawing its interest nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal

or withdrawal of the expression of interest;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the dismissal or withdrawal of the expression of interest.

(5) In addition, within 5 days of a party's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither it nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the party withdrawing its expression of interest; and

(ii) The terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

[FR Doc. 90-16547 Filed 7-13-90; 8:45 am]

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47 CFR Part 64

[Gen. Docket 90-64; FCC 90-230]

Indecent Communications by Telephone

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By its Notice of Proposed Rulemaking (NPRM) in Regulations Concerning Indecent Communications by Telephone, Gen. Docket 90-64 adopted February 13, 1990, 5 FCC Rcd 1011, FCC 90-74 (1990), 55 FR 5632, February 16, 1990, the Federal Communications Commission (FCC) sought comments on proposed changes to its rules governing restrictions on indecent telephone message services. The adoption of amended rules is required by congressional revisions enacted November 21, 1989 to section 223 of the Communications Act of 1934, as amended (the Act), which prohibits obscene communications for commercial purposes and imposes penalties on those who knowingly make available indecent communications by telephone for commercial purposes to persons under 18 years of age, or to adults without their consent. In this Report and Order (*R&O*) we adopt final rules under 47 CFR part 64 to establish defenses to prosecution in accordance with section 223(b) of the Act.

EFFECTIVE DATE: August 15, 1990.

FOR FURTHER INFORMATION CONTACT: Olga Madruga-Forti, Domestic Services Branch, Common Carrier Bureau, (202) 634-1855.

SUPPLEMENTARY INFORMATION: The "summary" and "supplementary information" in this notice summarize the aspects of the amended rules in a nontechnical manner. For a legal interpretation of the laws and regulations on indecent communications by telephone and a complete description of the changes adopted by the FCC in its R&O in GEN. Docket 90-64, FCC 90-230, adopted June 14, 1990 and released June 29, 1990, interested persons should refer to the final regulations in the R&O. The full text of the decision is available for inspection and copying during the weekday hours (excluding federal holidays) of 9 a.m. to 4:30 p.m. in the FCC's Public Reference Room, Room 239, 1919 M Street NW., Washington, DC, or transcripts may be purchased from the duplicating contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800. The item also will be published in the FCC Record.

On November 21, 1989, Congress enacted legislation (Pub. L. 101-166, 103 Stat. 1159, 1192-94 (1989)) which amends section 223 of the Act to prohibit obscene communications for commercial purposes and impose penalties on those who knowingly make available indecent communications by telephone for commercial purposes to persons under 18 years of age or to adults without their consent. Section 223(b)(3) established that it is a defense to prosecution for the defendant to restrict access to the prohibited indecent communications to persons eighteen years of age or older by complying with such procedures as the FCC may prescribe by regulation. As detailed in the NPRM and summarized in 55 FR 5632, the FCC has amended its rules governing obscene or indecent services on three occasions in accordance with congressional mandate. In this R&O we review the amended rules as proposed in the NPRM and the comments submitted, and adopt final rules under Part 64 to establish defenses to prosecution under section 223(b) of the Act.

The amended rules provide that in order to establish a defense to prosecution under section 223, adult information service providers are required to utilize credit card authorization, access codes, or scrambling in order to limit access to consenting adults over the age of eighteen. In addition, adult information service providers are required to notify carriers identified in section 223(c)(1) that they are providing the kind of service described in section 223(b). Where the providers subscribe to mass announcement services tariffed at the FCC, they must request of the carriers in writing that calls to the message services be subject to billing notification as adult message services. Moreover, we establish in our regulations that a common carrier shall not provide access to a communication specified in section 223(b) from the telephone of any subscriber who has not previously, in wirting, asked the carrier to provide access to such communication.

The defenses proposed take into account the varying technologies used by information providers and the differing business practices within the information industry; are sufficiently varied that any information provider should be able to adapt at least one to its operation without unreasonable expense; and will protect minors from access to indecent communications in the most minimally burdensome manner to information providers, carriers and those adults who wish access.

The regulations adopted in this R&O are required by section 223(b)(3) of the Communications Act of 1934, as amended, 47 U.S.C. 223(b)(3). The FCC adopts rules that will curtail children's access to indecent telephone messages and establish defenses to prosecution under section 223(b) of the Act, as directed by Congress.

No comments in direct response to the final regulatory flexibility analysis were filed.

The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been approved by the Office of Management and Budget under OMB control number 3060-0439.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 64 of the Commission's Rules and Regulations (chapter I of title 47 of the Code of Federal Regulations, part 64), is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.