

Docket no.	Location	Type	Effective date
COTP Puget Sound 90-04	Puget Sound	Security	21 Sep 90
COTP Puget Sound 90-05	Puget Sound	Safety	21 Sep 90
COTP San Diego 90-05	San Diego, CA	Safety	05 Oct 90
COTP San Diego 90-07	San Diego, CA	Safety	06 Oct 90
COTP SF Bay 90-14	San Francisco Bay	Safety	04 Oct 90
COTP SF Bay 90-16	San Francisco Bay	Safety	16 Dec 90
COTP SF Bay 90-17	San Francisco Bay	Security	16 Dec 90
COTP Tampa 90-99	Vinoy Basin	Security	10 Oct 90
COTP Wilmington 90-007	Cape Fear River	Safety	06 Oct 90

Dated: January 1, 1991.

Bruce Novak,

Executive Secretary, Marine Safety Council.

[FR Doc. 91-419 Filed 1-8-91; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 224

Postal Service Implementation of the Law Governing Selection of Court for Multiple Appeals

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service amends its rules to designate the General Counsel as the officer who will receive petitions for court review of agency orders when multiple appellants seek court of appeals review of the same order in more than one circuit. This change is being made in order to comply with Public Law 100-236 (28 U.S.C. 2112(a)), which was enacted to provide a mechanism for selecting which court of appeal will decide the case when there are multiple appeals of an agency order. Under the law, agencies are to publish a rule designating which officer and office will receive petitions for review.

EFFECTIVE DATE: January 9, 1991.

FOR FURTHER INFORMATION CONTACT: Neva R. Watson, (202) 268-2963.

SUPPLEMENTARY INFORMATION: Public Law 100-236 (28 U.S.C. 2112(a)) generally provides that, when two or more petitions for review are received within 10 days after issuance of an agency order, the agency must promptly notify the judicial panel on multidistrict litigation of that fact, and the judicial panel must, by random selection, designate one court where the record is to be filed and issue an order consolidating the petitions for review in that court. The agency must file the record in the court of appeals designated by the judicial panel.

Under former 28 U.S.C. 2112(a) actions would be heard in the circuit under the "first to file" rule. This led to "races to

the courthouse" whereby petitioners would rush to file in a circuit which was thought to be sympathetic to the petitioner's position. Public Law 100-236 eliminates this need for a circuit race and provides for a random selection process.

In order to participate in the random selection process, a person must file a petition for review of the agency order and submit a copy of the petition to the agency within 10 days of issuance of the order. The statute requires agencies to designate by rule an office and officer to receive the petition for review. Accordingly, the Postal Service is amending part 224 of its rules to provide that its General Counsel will receive petitions for court review of agency orders.

Under Public Law 100-236 (28 U.S.C. 2112(a)) only those petitions received by the agency within ten days of the date when an agency action becomes final are eligible for consideration in the random selection process. Any other petitions received after the ten day period will be consolidated in the Court of Appeals selected by the Judicial Panel. The rule therefore specifies that all copies of filed petitions shall be delivered by personal service or by certified mail, return receipt requested. Use of either of these two methods will allow the General Counsel to ascertain the day on which the petition was received at the agency and thus determine whether it falls within the ten-day period.

The Postal Service has determined that this rule is a rule of agency organization, procedure, and practice. Accordingly, the Postal Service is not seeking comments on it. Further, this rule is a nondiscretionary action in response to a statutory requirement that agencies designate an officer to receive copies of petitions for review of agency action and does not affect any substantive rights or duties of the public. Consequently, the Postal Service believes that good cause exists for making this rule effective immediately.

Accordingly, the Postal Service amends 39 CFR part 224 as follows:

List of Subjects in 39 CFR Part 224

Organization and functions
(Government agencies), Postal Service.

PART 224—ORGANIZATIONS REPORTING DIRECTLY TO THE POSTMASTER GENERAL

1. The authority citation for part 224 is revised to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, and 409; 28 U.S.C. 2112(a).

2. Section 224.4 is amended by redesignating existing paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), respectively, and by adding a new paragraph (b)(5) to read as follows:

§ 224.4 General Counsel.

* * * * *

(b) * * *

(5)(i) Receiving service of petitions for review of a final agency order in an appropriate Federal circuit court of appeals. Any aggrieved person filing a petition for review of a decision of the Governors within 10 days of issuance of the Governors' decision must ensure that a court-stamped copy of the petition for review is received by the General Counsel within that 10-day period in order to qualify for participation in the random selection process established in 28 U.S.C. 2112(a) for determining the appropriate court of appeals to review an agency final order when petitions for review of that order are filed in more than one court of appeals.

(ii) If the General Counsel receives two or more petitions filed in two or more United States Courts of Appeals for review of a decision by the Governors within ten days of the effective date of that action for the purpose of judicial review, the General Counsel will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period, in accordance with the applicable rule of the panel.

(iii) For the purpose of determining whether a petition for review has been received within the 10-day period under paragraph (b)(5)(ii) of this section, the petition shall be considered to be received on the date of delivery, if

personally delivered. If the delivery is accomplished by mail, the date of receipt shall be the date noted on the return receipt card.

Stanley F. Mires,
Assistant General Counsel, Legislative
Division.

[FR Doc. 91-350 Filed 1-8-91; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[AA-250-00-4370-02; Circular No. 2631]

RIN 1004-AB81

Protection, Management, and Control of Wild Free-Roaming Horses and Burros; Prohibited Acts, Administrative Remedies, and Penalties; Administrative Remedies

AGENCY: Bureau of Land Management,
Interior.

ACTION: Interim final rule and request
for comments.

SUMMARY: This interim final rule allows the authorized officer to place in full force and effect decisions to cancel a Private Maintenance and Care Agreement (PMACA) in situations where wild horses or burros subject to such an agreement are found to be abused or mistreated.

DATE: *Effective date:* January 9, 1991. Comments on the interim final rule should be received on or before March 11, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, U.S. Department of the Interior, room 5555, 1849 C St. NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the Bureau of Land Management (250), Premier Building, room 901, U.S. Department of the Interior, 1849 C St. NW., Washington, DC 20240; Telephone (202) 653-9215.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 4770.3, "Any

person who is adversely affected by a decision of the authorized officer * * * may file an appeal * * * " Under the regulations of the Bureau of Land Management (BLM) implementing the Administrative Procedure Act, most appealed decisions are stayed pending resolution of the appeal by the Interior Board of Land Appeals (IBLA). The existing rules delay wild horse and burro repossession decisions for up to 2 years pending the IBLA rulings.

The present regulations provide no means for immediate cancellation of a PMACA and repossession of adopted animals when an adopter's abuse or negligence threatens the welfare of a wild horse or burro. The BLM continues to have several cases every year that require immediate removal of an animal from an adopter to prevent severe or long-term damage to the animal's health. The health and welfare of these animals will be benefitted by implementation of this rule upon publication.

The principal author of this interim final rule is Vernon R. Schulze, wild horse and burro program specialist, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq. However, an additional paragraph has been added to the Note at the beginning of Group 4700 describing the information collection burden imposed by other regulations in the Group, as required by the Departmental Manual of the Department of the Interior. This Note has no relation to the substantive provisions of this rule.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

Under the authorities cited below, part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is amended as set forth below.

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for part 4700 continues to read as follows:

Authority: Act of Dec. 15, 1971, as amended (16 U.S.C. 1331-1340), Act of Oct. 21, 1976 (43 U.S.C. 1701 et seq.), Act of Sept. 8, 1959 (18 U.S.C. 47), Act of June 28, 1934 (43 U.S.C. 315).

2. The Note at the beginning of Group 4700 is amended by adding a new paragraph at the end thereof to read as follows:

* * * * *

Public reporting burden for this information is estimated to average 0.165 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information Collection Clearance Officer, Division of Information Resources Management, Bureau of Land Management (770), 1849 C Street NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project 1004-0042, Washington, DC 20503.

3. Section 4770.3 is revised to read as follows:

§ 4770.3 Administrative remedies.

(a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals must be filed within 30 days of receipt of the decision in accordance with 43 CFR part 4, subpart E.

(b) The authorized officer may place in full force and effect decisions to cancel a Private Maintenance and Care Agreement so as to allow repossession of wild horses or burros from adopters to protect the animals' welfare. Appeals and petitions for stay of decisions shall be filed with the Interior Board of Land Appeals as specified in this part.

Dated: November 7, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-438 Filed 1-8-91; 8:45 am]

BILLING CODE 4310-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1 and 73

[General Docket 90-264; FCC 90-410]

Comparative Hearing Process for New Broadcast Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revises its rules to expedite the comparative hearing process for new broadcast applicants in order to speed service to the public.

EFFECTIVE DATES: Except as noted below, the rules adopted in this Report and Order will become effective on February 13, 1991. 47 CFR 73.1620(g) will become effective April 9, 1991 or upon approval of that reporting requirement by the Office of Management and Budget, whichever is sooner. A document announcing the effective date will be published in the Federal Register at a later date. The modification of the Ruarch policy announced in this Report and Order shall become effective on March 21, 1991.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254-6530.

SUPPLEMENTARY INFORMATION: The following collection of information contained in these new rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW, Washington, DC 20036, (202) 452-1422. Persons wishing to comment on the information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information, contact Jerry Cowden, Federal Communications Commission, (202) 632-7413.

OMB number: None.

Title: Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (Report and Order in General Docket 90-264).

Respondents: Businesses.

Estimated annual burden and frequency of response: The information collection burdens will involve the identification of deviations from comparative promises made to the

Commission in applications for new broadcast facilities. Any such deviations that occur during the construction phase and the first year of operation of a new station must be reported to the Commission.

10 respondents: 50 hours total annual burden

5 hours average burden per response

Frequency: Upon application for a license to cover a construction permit, if any deviations occur during the construction phase, and upon the first anniversary of the commencement of program test authority, if any deviations occur during that first year of station operation.

Needs and uses: The information will be collected to expedite the Commission's comparative hearing process and to avoid abuses of that process associated with the submission of inflated and/or non-bona fide comparative promises. Submission of the required reports will enable the Commission to determine whether the successful applicant was fulfilling its comparative promises concerning divestiture of other media interests, the integration of ownership and management, and the passive role of certain station owners. This is a summary of the Commission's Report and Order, adopted December 13, 1990, FCC 90-410. The full text of this Commission Report and Order is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW, Washington, DC. The full text of this Report and Order may also be purchased from the Commission's copy contractor.

Summary of Report and Order

1. By this Report and Order, the Commission intends to substantially reduce the time consumed in the conduct of comparative hearings and agency review in cases involving applicants for new broadcast facilities. During the process of selecting among otherwise qualified applicants for new broadcast facilities the public is deprived of a valued service, and the ultimate licensee is deprived of the opportunity to provide that service. After balancing the important goal of selecting the best qualified applicant against the need to eliminate unnecessary delay, we are convinced that the time consumed in the comparative hearing process can be substantially reduced while still preserving the fundamental fairness and public interest benefits of our proceedings.

Encouraging Settlements

2. Settlements can be a significant factor in expediting the new service, and most commenters support the objective of encouraging settlements. Although, in a particular case, a settlement may result in a grant to an applicant that might not be considered "best qualified" under our comparative criteria, the settlement process takes place within the context of the comparative criteria, in that an applicant's evaluation of its own comparative standing, as well as that of its competitors, has an impact on its decision to offer or accept a settlement or to preserve to the end of the process. Thus, any reduction in the comparative merits of an applicant that is granted after settlement, as opposed to one that is granted in a case that is not settled, is likely to be marginal, if it occurs at all. Further, settlements expedite the provision of new broadcast service to the public and permit government resources to be turned to the more expeditious resolution of those cases that remain. In these circumstances, we think the benefit of conducting the hearing is outweighed by the public interest benefits of settlement.

A. The Hearing Fee

3. The Notice observed that the hearing fee may have a salutary effect on settlements that would be enhanced by the earlier payment of the fee. Most commenters addressing the issue agree that the earlier payment of the hearing fee would have a beneficial effect on the comparative hearing process. Thus, we will amend our rules to require payment of the hearing fee before an applicant is designated for hearing, on a date established in the public notice announcing the acceptance of mutually exclusive applications and establishing a deadline for filing petitions to deny those applications. The fee payment date to be announced in that public notice will be approximately 30 days after the petition to deny deadline.

4. Hearing fees paid at that time will, however, be refunded upon request by applicants that are dismissed, voluntarily or involuntarily, before a hearing designation order (HDO) is issued or are granted without being designated for a comparative hearing. After an applicant has been designated for hearing, the hearing fee may also be refunded under the circumstances provided for in § 1.1111(c) of our rules. 47 CFR 1.1111(c).

5. We will make the transition from our current rule (payment of the hearing fee with Notices of Appearance) to the new rule (payment prior to the HDO) in

the following manner. For all commercial broadcast applications that have not been placed on a "B" cut-off list released prior to February 13, 1991 (the effective date of the rule change), the date for making payment of the hearing fee will be established in the public notice setting the "B" cut-off deadline. All commercial broadcast applications that have been placed on a "B" cut-off list released prior to February 13, 1991, will be required to pay their hearing fee by March 15, 1991, unless such applications are designated for hearing before that date. All applicants designated for hearing before March 15, 1991, should pay their hearing fee with their Notices of Appearance.¹

B. Pre-Designation Settlements

6. The Notice in this proceeding proposed to specify "settlement advocates" to encourage applicants to settle the case before the HDO. It also sought comments on whether the pre-designation settlement process would be enhanced by requiring all pending applicants that have not supplied the additional information on financing and integration proposals now required by FCC Form 301 to provide that information in an amendment to their applications.²

To further encourage settlements through mergers, we sought comment on whether we should permit the merged applicant to enjoy the comparative advantages achieved by virtue of the merger.³ A number of commenters support a voluntary settlement advocate process, but others are concerned that the process would delay action on the HDO. Commenters would also require all pending applicants to provide additional financial and integration information, but most oppose comparative upgrading through mergers.

7. Although the settlement advocate process may result in some increase in the number of cases that are settled before designation, it may also delay the processing of applications that partake of the process. On balance, we do not believe that the anticipated increase in

pre-designation settlements offset the possibility of processing delays. We are also persuaded that permitting merged applicants to upgrade their comparative standing by virtue of the merger would only lead to comparative gamesmanship. Finally, the matter of requiring pending applicants to submit additional financial and integration information has been dealt with in *Revision of Application for Construction Permit for Commercial Broadcast Station*, 4 FCC Rcd 3853, recon. denied, FCC Rcd _____ (1990).

C. Settlement Conferences

8. To encourage more settlements after designation but before trial, the Notice proposed that applicants should participate in an off-the-record settlement conference before a "settlement judge." The commenters generally favor this process, although some believe that settlements are more likely if the FCC is not involved in the process. After considering the comments, we have decided to make settlement judges available to applicants on a voluntary, experimental basis.⁴ Where all parties believe that a settlement judge might facilitate settlement efforts, a request for the assignment of a settlement judge should be submitted to the presiding judge who will forward it to the Chief Administrative Law Judge. In the Chief ALJ's discretion, a settlement judge will be assigned. After reviewing the applicants' proposals, the settlement judge will meet with the applicants individually and/or in concert to explore a potential settlement of the matter.⁵

9. As with pre-designation mergers, we will not permit comparative upgrading of applications that enter partial settlements through the settlement judge process. While the prospect of such upgrading may

encourage participation in the process, it may also encourage comparative gamesmanship and the filing of speculative applications. Similarly, we will not refund all or part of the hearing fee paid by the applicants that participate in the process. To do so would only decrease incentives to settle the case even earlier. In this regard, we believe that the prospect of avoiding the costs and delays of litigation provide adequate incentives to settlements.

D. The Ruarch Policy

10. The Notice sought comment on the possible reversal or modification of our holding in *Ruarch Associates*, 103 FCC 2d 1178 (1986), in which an applicant granted after a settlement was relieved of certain comparative commitments. We also sought comment on appropriate means to ensure the future adherence to promises made in applications for purposes of enhancing an applicant's comparative standing under diversity and integration criteria. The commenters were split on the proposal to reverse or modify Ruarch, but most agreed that the lack of post-grant enforcement of comparative promises has been a contributor to abuses of the Commission's processes.

11. Although the Ruarch policy may encourage inflated comparative commitments, the policy may also provide an added incentive to settle. In striking a balance between these conflicting considerations, we believe there is merit to the proposal in the comments to permit the successful applicant in a "global" settlement to withdraw divestiture and integration proposals where the settlement is entered into early in the hearing process. Thus, where a settlement of the case is entered into and filed with the presiding judge on or before the notice of appearance deadline, the judge may entertain and grant a request to relieve the successful applicant of divestiture and integration proposals.⁶ In settlements reached after the notice of appearance deadline, the successful applicant will be expected to fulfill its divestiture and integration proposals.

12. We also agree with the commenters that some oversight of applicant adherence to comparative promises is appropriate, and ensuring at least one full year's compliance with such promises would be sufficient to test the applicant's *bona fides* and to

¹ After publication of this rule change in the *Federal Register*, the Commission will issue a public notice specifying the method for payment of the hearing fee.

² The Form 301 was amended to require the additional information for applications filed on or after June 26, 1989. Applications that were pending prior to that date were not required to provide the newly required information. *Revision of Application for Construction Permit for Commercial Broadcast Station*, 4 FCC Rcd 3853, recon. Denied, 5 FCC Rcd _____ (1990).

³ Presently, such comparative upgrades are not permitted. See *Daytona Broadcasting Co., Inc.*, 101 FCC 2d 1010, 1012, recon. granted in part, 102 FCC 2d 931 (1986).

⁴ The settlement judge process is an alternate means of dispute resolution within the meaning of the Administrative Dispute Resolution Act. Pub. L. 101-552 (November 15, 1990). See 5 U.S.C. 581(3). The Notice also solicited comments on the potential uses of other alternative dispute resolution techniques in the comparative process. William Ward and Virginia Carson support the use of mediators in the pre-designation settlement process. Section 3 of the Administrative Dispute Resolution Act requires agencies to adopt a policy that addresses alternate means of dispute resolution, and we will take up the question of what other forms of alternative dispute resolution may be efficacious in a separate proceeding commenced under that Act.

⁵ The settlement judge shall be a "neutral" as defined in the Administrative Disputes Resolution Act, 5 U.S.C. 581(9) and 583(a-d), and he shall have all the powers conferred by that Act. On December 31, 1992, the Chief ALJ shall submit a report to the Commission reflecting the number of cases in which settlement judges have been assigned and the resolution of those cases.

⁶ Under this policy, an applicant could only be relieved of divestiture proposals relating to its comparative standing. Divestiture required by operation of the Commission's ownership restrictions would remain in force.

discourage inflated commitments.⁷ Thus, permittees authorized out of the comparative hearing process, including those granted after a settlement, will be required to file a statement with their applications for a license to cover their permits (FCC Form 302), identifying any deviations from the divestiture and/or integration promises contained in their applications, unless they have been relieved of those obligations under the policy enunciated above. A similar statement will be required to be filed on the first anniversary of the commencement of program tests.⁸ Program tests generally commence within ten days of the filing of the Form 302. See 47 CFR 73.1620(a). The Commission will take appropriate enforcement action in any case in which deviations from these comparative proposals indicate that the proposals, as made to the Commission, constitute a misrepresentation.

Expediting the Hearing Process

A. Discovery

13. We proposed to expedite the conduct of discovery in comparative proceedings. Generally, the commenters view discovery as an essential element of the hearing process, necessary to expose exaggerated or sham proposals, but several agree that the time allowed for discovery can be shortened. As suggested in the comments, we will commence discovery earlier by amending § 1.325 of our rules to incorporate a standardized document production order for use in comparative proceedings, requiring applicants to make the enumerated documents available to their competitors, or interpose an objection based on a claim of privilege, within 20 days after the issuance of the HDO, *i.e.*, concurrently with the filing of their notices of appearance.⁹ Any motions to compel the production of documents for which a privilege has been asserted should be filed within 5 working days, and the presiding judge would be expected to dispose of any such motions within 10 calendar days. The HDO will also require applicants to exchange a standardized integration statement on

the same date. With the early provision of the information required in the standardized document production order and the uniform integration statement, we would expect that the remainder of the discovery process could be expedited.

14. We are also adopting the suggestion that parties be permitted to request additional documents without making a "good cause" showing and to eliminate the requirement that ALJs rule on unopposed document requests. Parties may request additional relevant documents, not called for in the standardized production order, at any time after the issuance of the HDO, but initial supplemental requests for documents must be filed no later than ten days after the notice of appearance deadline. Any supplemental document requests must be complied with or objected to within ten calendar days. Any motions to compel the production of documents for which a privilege has been asserted should be filed within five working days of the document production date, and the presiding judge would be expected to dispose of any such motions within 10 calendar days.

15. Oral depositions would generally be scheduled after the initial document production. All applicants must be prepared to make their active and passive owners available for such depositions after the notice of appearance deadline, and the 21 day notice provision for depositions will not apply to depositions of these applicant principals. See 47 CFR 1.315. Further, depositions of these principals will be held in Washington, DC or in the proposed community of license, at the deponents' option, unless all parties agree to some other location. In this manner, we believe that discovery in the routing comparative case can be completed within 90 days of the issuance of the HDO. However, we recognize that there will be cases in which more time is needed, and the administrative law judges have the discretion to permit discovery to extend beyond that time limit in unusual cases or when the issues have been enlarged.

16. In order to facilitate discovery on new issues added to a proceeding in response to petitions to enlarge issues, we will amend § 1.229 of our rules to require that a motion to enlarge issues identify those documents the moving party wishes to have produced and any other discovery procedures the movant wishes to employ. If the motion is granted, the ALJ will simultaneously rule on the additional discovery requests.

B. The "Anax" Doctrine

17. In *Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981), we allowed applicants to exclude limited partners (and the owners of nonvoting stock) from the calculus by which we determine the comparative credit for integration of ownership and management (as well as for diversity). The Notice recognized that active/passive ownership structures that take advantage of the Anax doctrine had spawned lengthy litigation, and it asked whether the Commission should eliminate or modify that doctrine to curtail such litigation. The commenters were split on the proposed elimination of the Anax doctrine, and several suggest that, if it is eliminated, the change should not apply to pending applications.

18. Upon consideration of the comments, we have decided to not eliminate or alter the Anax doctrine in this proceeding. The underlying premise of that doctrine is that certain passive ownership interests are not cognizable under the Commission's attribution rules, 47 CFR 73.3555 Note 2, and such interests should not dilute the integration credit available to applicants whose organization includes such nonattributable interests. That premise remains viable, and we will not overturn the Anax case or modify the Anax doctrine in this proceeding.¹⁰ However, as suggested by several commenters, we will require successful applicants proposing an active/passive ownership structure to report any deviations from their proposal that active owners retain sole control of the permittee/licensee in applications for a license to cover the construction permit and again on the first anniversary of program test authority. The Commission will take appropriate enforcement action in any case in which deviations from the active/passive ownership structure indicate that the proposal, as made to the Commission, constitutes misrepresentation.

C. Written Cases

19. The Notice proposed to require the use of written cases except in the most unusual circumstances. Parties desiring to present oral testimony or cross examine opponents on their written cases would be required to make a specific showing to the presiding judge

⁷ See 47 CFR 73.3597.

⁸ We believe that FCBA's proposal to select a runner-up, who would displace the winning applicant if it failed to live up to its promises, raises legal and other issues that go far beyond the scope of matters set forth in the Notice. Accordingly, that proposal will not be considered in this proceeding.

⁹ As with the notice of appearance, the documents will be served on counsel for all competing applicants. If no counsel is indicated in an applicant's previous filings, the material will be served on the applicant at the address indicated in the application.

¹⁰ This decision should not be taken as an indication of Commission action in adjudicatory cases that involve questions relating to the active/passive ownership structure under the Anax doctrine. As such cases come before us, we will decide them on the basis of the record compiled by the parties.

supporting that request. All of the commenters addressing this proposal oppose limitations on cross examination in hearings. Although our experience indicates that the use of strictly written procedures can expedite the hearing process, we did not propose to preclude ALJ's from taking oral testimony. For some types of issues, it may be necessary to observe the demeanor of the witnesses to assess their creditability, and, in other instances, cross examination may be required. Section 1.248 of our rules empowers ALJ's to limit oral testimony, 47 CFR 1.248, and, in the exercise of the discretion granted ALJ's by that rule, we will make it clear that ALJ's should permit oral testimony and cross examination only where material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures or the public interest otherwise requires oral evidentiary proceedings.¹¹

D. Time Guidelines

20. The Notice proposed time guidelines that would result in the issuance of an ID in a routine comparative case within seven months of the HDO. However, a number of commenters suggest that our guidelines provide inadequate time to prepare thorough and thoughtful findings and initial decisions, and that our guidelines do not consider the time required to resolve motions to enlarge issues. Such motions must be filed within 30 days of the publication of the HDO in the *Federal Register*, 47 CFR 1.229, but several weeks could be saved if the time ran from the release of the HDO.

21. Based on commenters suggestions, we believe that additional savings are possible, particularly in the routine case that does not involve delays associated with the enlargement of issues. Thus, we have determined that our goal should be the resolution of routine comparative cases by ID within nine months of the HDO. As noted above, the HDO would commence the discovery process by requiring the exchange of documents pursuant to a standardized document production order and the filing of uniform integration statements. The routine discovery phase of the case generally would be terminated 90 days after the issuance of the HDO. Exhibits would be exchanged 30 days after completion of discovery, and the hearing would be scheduled about 15 days

thereafter.¹² The record should be closed immediately at the end of whatever hearing is necessary, and 60 days provided for the filing of proposed findings and reply findings. The ALJ's should make every effort to prepare and release the ID in these routine cases within 90 days of the last pleading.

Expediting Review

A. Eliminate Intermediate Review

22. The Notice sought comments on whether elimination of the Review Board would expedite the resolution of broadcast comparative cases after the ID. The commenters generally oppose this proposal, opining that the Review Board operates expeditiously and efficiently. On the basis of these comments and the reservations expressed in the Notice, we will not eliminate the intermediate review function.

B. Reorganize the Intermediate Review Function

23. The Notice also solicited comment on the possible reorganization or modification of the two-tiered review system, including a consolidation of the Review Board and its staff with the staff that prepares adjudicatory decisions for the Commission. Moreover, because the purpose of the Review Board is to free the Commission from burdensome review functions, we proposed an amendment to § 0.361(b) of our rules to permit the Commission or any of its members to provide legal and policy guidance and advice to the Board or any of its members. 47 CFR 0.361(b).

24. The commenters addressing reorganization generally opposed our proposals. Some also suggest that permitting Commissioners to discuss the merits of cases with the Board would give the impression that decisions in comparative cases are based on politics rather than reasoned decisionmaking. On the basis of the comments, we have determined that the best course would be to maintain the current organization of the Board and the limitations of § 0.361(b) of our rules restricting communications between the Board and the Commission. To further expedite the intermediate review process, we are

¹² We are aware of commenters' observations that hearings are often delayed by the unavailability of hearing rooms. In order to meet this guideline, the Office of Managing Director will ascertain how many, if any, additional hearing rooms are necessary and whether that need can be accommodated by putting existing conference rooms and the Commission meeting room into service as hearing rooms. If these alternatives should prove insufficient and additional space is required, we will undertake to make additional hearing rooms available within the limitations of the Commission's budget.

amending § 1.277 of our rules to further restrict the permissible length of consolidated briefs and exceptions to 25 double-spaced typewritten pages.

C. Oral Argument

25. To expedite the review process, we proposed to limit oral argument before the Review Board and the Commission to cases involving extraordinary circumstances. The commenters generally oppose restrictions on oral argument, although some agree that the Board should not routinely grant requests for oral argument as it does now. The commenters generally assert that oral argument serves the important function of focusing and defining key appellate issues, and it probably shortens rather than lengthens review time. The Commission and the Board have the discretion not to hear oral argument. See S. Rep. No. 576, 87th Cong., 1st Sess. 15 (1961). Although we recognize that oral argument may, in some cases, provide valuable assistance to the reviewing authority in resolving the issues before it, the scheduling of oral argument also delays the ultimate resolution of the case. Thus, we will amend § 1.277 of the rules to provide that oral argument be allowed only where it is requested by the parties and the Board or Commission finds that it will assist in the resolution of the issues presented on appeal.

D. Time Guidelines

26. The Commission's rules currently require the Review Board to adopt a decision within 180 days after release of an ID, and section 5(d) of the Communications Act requires the Commission to conduct its business with the objective of rendering a decision in hearing cases "within six months from the final date of the hearing * * *." 47 U.S.C. 155(d).¹³ The Notice proposed internal guidelines establishing a goal of issuing final agency decisions in these comparative cases within six months of the IDs by issuing Review Board decisions within 3 months and Commission decisions 3 months thereafter. Generally, the commenters focused on the amount of time it takes the Commission to issue a decision in these cases. Some would eliminate the application for review process entirely, others would limit its scope to policy issues, or have the Review Board decision become final if the application

¹³ The provision was enacted in 1952, prior to the authorization of the Review Board. Thus, the policy enunciated in this section did not contemplate the two-stage review process that now exists.

¹¹ Similarly, the ALJ's retain the discretion to permit the submission of rebuttal cases in the form most conducive to the efficient resolution of the case.

for review is not acted upon within six months.

27. Upon consideration of the comments, we believe that time savings can be achieved in the resolution of these cases by the Review Board. With the elimination of oral argument in appropriate cases, the Review Board should be able to complete its consideration of routine cases within four months of the filing of exceptions, *i.e.*, approximately five and a half months after the issuance of the ID.¹⁴ As to Commission review, the Communications Act provides that parties aggrieved by a decision taken pursuant to delegated authority "may file an application for review" of that decision by the Commission and "every such application shall be passed upon by the Commission." 47 U.S.C. 155(c)(4). Thus, we could not, consistent with the Act, eliminate applications for review or limit their scope. Similarly, it does not appear that a rule providing that applications for review would be deemed denied or automatically denied satisfies the statutory requirement that they be "passed upon by the Commission." 47 U.S.C. 155(c)(4).¹⁵

28. In any event, we conclude that a commitment to disposing of applications for review within five months is more appropriate than the commenters' proposals.¹⁶ We are amending our rules to include an express statement of this policy and a commitment to either dispose of applications for review within five months of their filing or issue an order indicating that additional time will be required in a particular case.

V. Other Proposals

29. The Notice proposed to give ALJs the authority to impose forfeitures, in addition to denying the application, in cases in which applicants made misrepresentations to the Commission or engaged in other misconduct during the application process. The authority to impose forfeitures on applicants is conferred by the Communications Act. See Omnibus Budget Reconciliation Act of 1989, Public Law No. 101-239, section 3002, 103 Stat. 2106, codified at 47 U.S.C.

503(b)(2)(A). This proposal was not addressed in the comments, and we have therefore determined that our ALJs will have the authority to impose forfeitures up to the statutory maximum amount as proposed. See 47 U.S.C. 503(b)(2)(A) (\$25,000 for each violation to a maximum of \$250,000 for continuing violations). In any case in which the ALJ, the Review Board or the Commission enlarge the issues to inquire into allegations of such misconduct, the enlarged issues shall include notice that, after hearings on the enlarged issue and upon a finding that the alleged misconduct occurred and warrants such penalty, in addition to or in lieu of denying the application, the applicant may be liable for a forfeiture of up to the maximum statutory amount.¹⁷

30. A number of commenters submitted proposals to change the policies under which the Commission awards comparative credits and demerits in comparative broadcast proceedings. These proposals were not raised in the Notice, and they are beyond the scope of this proceeding which focuses, for the most part, on the procedures employed in broadcast comparative cases rather than the comparative criteria used to evaluate the applicants.

Conclusion

31. The process of selecting which of otherwise qualified applicants should be granted must remain fair and effective, but undue delay in that process disserves the public by delaying the institution of new service and exacting an economic toll on both the Government and the applicants. Thus, after consideration of the comments filed in this proceeding, we have adopted procedural changes that are designed to reduce significantly the time consumed in resolving these comparative cases. Where cases had been resolved in an average of almost three years, we believe the procedures adopted herein will reduce the duration of routine cases prosecuted from HDO through ID, Review Board decision, and Commission decision to approximately 21 months.

32. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3502, and found to impose new or modified requirements or burdens on the public. As such, the new rules are subject to approval by the Office of Management and Budget under

the Paperwork Reduction Act and a copy of this Report and Order is being transmitted to the Office of Management and Budget along with a request for approval of these new paperwork requirements.

33. Final Regulatory Flexibility Analysis

I. Reason for the Action

To expedite the resolution of comparative hearings involving applicants for new broadcast facilities.

II. Objective of this Action

To expedite the resolution of comparative hearings involving applicants for new broadcast facilities.

III. Legal Basis

These changes are taken under sections 4(i), 4(j), 5(b), 5(c), 303(r) and 309 of the Communications Act of 1934, as amended.

IV. Number and Type of Small Entities Affected by the Proposed Rule

Applicants for available new broadcast facilities are, for the most part small entities. Presently, the Commission has pending approximately 3,000 such applications that may come under the rules proposed herein.

V. Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule

Successful applicants will be required to report any deviations from the comparative promises made in their applications upon completion of construction of the station and on the first anniversary of the commencement of program tests on the station.

VI. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule

None.

VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objective of the Action

Because these changes will expedite the resolution of comparative broadcast hearings for new applicants, it will generally permit the successful applicant to commence operation of the new station at an earlier date. Thus, the applicants, generally small entities, will be benefited by these changes. The Commission has considered, and in some cases adopted, commenters' suggestions to fulfill its goal of expediting the comparative hearing process with a minimum of cost or inconvenience to applicants.

¹⁴ Exceptions to IDs are filed within 30 days of the release of the decision, and oppositions (or replies) are filed 15 days thereafter.

¹⁵ Even if such a rule were permissible under the statutory scheme, an order, "disposing of all applications for review," would be required for the computation of time for judicial review. See 47 U.S.C. 155(c)(7).

¹⁶ Applications for Review must be filed within 30 days of the release of the Board's decision, and oppositions must be filed within 15 days of the Application for Review. Thus, considering this pleading cycle, in the routine case, the Commission will act within approximately six and a half months of the release of the Board decision.

¹⁷ Where such issues are specified in the HDO, that order will contain a similar notice.

34. Accordingly, *it is ordered* that the motions to accept late filed comments filed by the Howard University Small Business Development Center and the Congressional Black Caucus *are granted*.

35. *It is further ordered* that parts 0, 1, and 73 of the Commission's rules, 47 CFR parts 0, 1, and 73 *are amended* as set forth below.

36. *It is further ordered* that the rule changes adopted herein shall be effective on February 13, 1991, except that the requirement for the submission of reports by permittees and licensees contained in 47 CFR 73.1620(g) will become effective 90 days from the date of publication of this Report and Order in the *Federal Register* or upon approval of that requirement by the Office of Management and Budget, whichever is sooner. A document announcing the effective date will be published in the *Federal Register* at a later date.

37. *It is further ordered* that the modification of the *Ruarch* policy enunciated herein shall become effective on March 21, 1991, and it shall apply to all requests for approval of agreements filed on that date and thereafter.

38. *It is further ordered* that all commercial broadcast applications that have been the subject of a public notice released prior to February 13, 1991, announcing the acceptance for filing of mutually exclusive applications, shall pay their hearing fee by March 15, 1991, unless an order designating such applications for hearing is released before that date. All applicants designated for hearing in orders released before March 15, 1991, should pay their hearing fee with their Notices of Appearance.

39. *It is further ordered* that the Secretary shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

40. This action is taken pursuant to authority contained in sections 4(i), 4(j), 5(b), 5(c), 303(r) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(b), 155(c), 303(r) and 309.

For further information concerning this proceeding, contact Martin Blumenthal, Office of General Counsel (202) 254-6530.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 73

Radio broadcasting and Television broadcasting.

Rule Changes

47 CFR Parts 0, 1, and 73 are amended as follows:

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

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

2. Section 0.251 is amended by adding a new paragraph (f)(12) to read as follows:

§ 0.251 Authority delegated.

* * * * *

(f) * * *

(12) In preparing decisions for Commission consideration on applications for review of routine broadcast comparative cases involving applicants for only new facilities, the General Counsel will make every effort to submit such draft decisions for Commission consideration within four months of the filing of the last responsive pleading. If the Commission is unable to adopt a decision in such cases within five months of the last responsive pleading, it shall issue an order indicating that additional time will be required to resolve the case.

* * * * *

3. Section 0.341 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 0.341 Authority of administrative law judge.

* * * * *

(d) In the conduct of routine broadcast comparative hearings involving applicants for only new facilities, *i.e.*, cases that do not involve numerous applicants and/or motions to enlarge issues, the presiding administrative law judge shall make every effort to conclude the case within nine months of the release of the hearing designation order. In so doing, the presiding judge will make every effort to release an initial decision in such cases within 90 days of the filing of the last responsive pleading.

(e) Upon assignment by the Chief Administrative Law Judge, Administrative Law Judges, including the Chief Judge, will act as settlement judges in appropriate cases. See 47 CFR 1.244 of this chapter.

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

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.

5. Section 1.221 is amended by removing paragraphs (l) and (g) and the Note and by adding a new paragraph (c)(1) to read as follows:

§ 1.221 Notice of hearing; appearances.

* * * * *

(c) * * *

(1) In comparative broadcast proceedings involving applicants for only new facilities, the notice of appearance filed by all applicants in the proceeding shall indicate that service of the notice of appearance on the other parties in the case was accompanied by the materials required to be exchanged pursuant to the Standard Document Production Order (see § 1.325(c)(1) of this part) and the Standardized Integration Statement (see § 1.325(c)(2) of this part). The Standardized Integration Statement should be filed with the presiding Administrative Law Judge, but, unless the presiding Administrative Law Judge rules otherwise, the documents exchanged pursuant to the Standard Document Production Order should not be submitted to the presiding Administrative Law Judge. Failure to serve the required materials on all other parties to the case will be tantamount to a failure to file a notice of appearance.

* * * * *

6. Section 1.229 is amended by revising paragraphs (a) and (b) and adding new paragraphs (e) and (f) to read as follows:

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

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

(b)(1) In comparative broadcast proceedings involving applicants for only new facilities, such motions shall be filed within 30 days of the release of the designation order, except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the *Federal Register*. (See § 1.223 of this part).

(2) In comparative broadcast proceedings involving renewal applicants, such motions shall be filed

within 30 days after publication of the full text or a summary of the designation order in the **Federal Register**.

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

(e) In comparative broadcast proceedings involving applicants for only new facilities, in addition to the showing with respect to the requested issue modification described in paragraph (d) of this section, the party requesting the enlargement of issues against an applicant in the proceeding shall identify those documents the moving party wishes to have produced and any other discovery procedures the moving party wishes to employ in the event the requested issue is added to the proceeding. In the event the motion to enlarge issues is granted, the Commission or delegated authority acting on the motion will also rule on the additional discovery requests, and, if granted, such additional discovery will be scheduled to be completed within 30 days of the action on the motion unless the persons subject to such additional discovery are not parties to the proceeding. In such case, additional time will be required to afford such persons adequate notice of the discovery procedures being employed.

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

7. A new § 1.244 is added to read as follows:

§ 1.244 Designation of a settlement judge.

(a) In broadcast comparative cases involving applicants for only new

facilities, the applicants may request the appointment of a settlement judge to facilitate the resolution of the case by settlement.

(b) Where all applicants in the case agree that such procedures may be beneficial, such requests may be filed with the presiding judge no later than 15 days prior to the date scheduled by the presiding judge for the commencement of hearings. The presiding judge shall suspend the procedural dates in the case and forward the request to the Chief Administrative Law Judge for action.

(c) If, in the discretion of the Chief Administrative Law Judge, it appears that the appointment of a settlement judge will facilitate the settlement of the case, the Chief Judge will appoint a "neutral" as defined in 5 U.S.C. 581 and 583(a) to act as the settlement judge.

(1) The parties may request the appointment of a settlement judge of their own choosing so long as that person is a "neutral" as defined in 5 U.S.C. 581.

(2) The appointment of a settlement judge in a particular case is subject to the approval of all the applicants in the proceeding. See 5 U.S.C. 583(b).

(3) The Commission's Administrative Law Judges are eligible to act as settlement judges, except that an Administrative Law Judge will not be appointed as a settlement judge in any case in which the Administrative Law Judge also acts as the presiding officer.

(4) Other members of the Commission's staff who qualify as neutrals may be appointed as settlement judges, except that staff members whose duties include drafting, review, and/or recommendations in adjudicatory matters pending before the Review Board or the Commission shall not be appointed as settlement judges.

(d) The settlement judge will have the authority to require applicants to submit their Standardized Integration Statements and/or their written direct cases for review. The settlement judge may also meet with the applicants and/or their counsel, individually and/or at joint conferences, to discuss their cases and the cases of their competitors. All such meetings will be off-the-record, and the settlement judge may express an opinion as to the relative comparative standing of the applicants and recommend possible means to resolve the proceeding by settlement. The proceedings before the settlement judge shall be subject to the confidentiality provisions of 5 U.S.C. 584. Moreover, no statements, offers of settlement, representations or concessions of the parties or opinions expressed by the settlement judge will be admissible as

evidence in any Commission licensing proceeding.

8. Section 1.248 is amended by adding a new paragraph (d)(4) to read as follows:

§ 1.248 Prehearing conferences; hearing conferences.

(d) * * *

(4) In broadcast comparative cases involving applicants for only new facilities, oral testimony and cross examination will be permitted only where, in the discretion of the presiding judge, material issues of decisional fact cannot be resolved without oral evidentiary hearing procedures or the public interest otherwise requires oral evidentiary proceedings.

9. Section 1.277 is amended by revising paragraph (c) to read as follows:

§ 1.277 Exceptions; oral arguments.

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

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

§ 1.311 General.**(c) Schedule for use of the procedures.**

(1) In comparative broadcast proceedings involving applicants for only new facilities, discovery commences with the release of the hearing designation order, and, in routine cases, the discovery phase of the proceeding will be conducted in a manner intended to conclude that portion of the case within 90 days of the release of the designation order.

(2) In all other proceedings, 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 of this part.

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

11. Section 1.313 is amended by revising the introductory paragraph to read as follows:

§ 1.313 Protective orders.

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

12. Section 1.315 is amended by adding a new paragraph (e) to read as follows:

§ 1.315 Depositions upon oral examination—notice and preliminary procedure.

(e) *Broadcast comparative proceedings involving applicants for only new facilities.* In these cases, the 21-day advance notice provision of paragraph (a) of this section shall be

inapplicable to depositions of active and passive owners of applicants in the proceeding. All applicants in such proceedings should be prepared to make their active and passive owners available for depositions during the period commencing with the deadline for filing notices of appearance and ending 90 days after the release of the designation order, if such depositions are requested by a party to the proceeding. All such depositions will be conducted in Washington, DC or in the community of license of the proposed station, at the deponent's option, unless all parties agree to some other location.

13. Section 1.325 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 1.325 Discovery and production of documents and things for inspection, copying, or photographing.

(a) A party to a Commission proceeding may request any other party except the Commission to produce and permit inspection and copying or photographing, by or on behalf of the requesting party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things which constitute or contain evidence within the scope of the examination permitted by § 1.311(b) of this part and which are in his possession, custody, or control or to permit entry upon designated land or other property in his possession or control for purposes of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by § 1.311(b) of this part.

(1) Such requests need not be filed with the presiding officer, but copies of the request shall be served on all other parties to the proceeding.

(2) The party against whom the request was made must, within 10 days, comply with the request or object to the request, claiming a privilege or raising other proper objections. If the request is not complied with in whole or in part, the requesting party may file a motion to compel production of documents or access to property with the presiding officer. A motion to compel must be accompanied by a copy of the original request and the responding party's objection or claim of privilege. Motions to compel must be filed within five business days of the objection or claim of privilege.

(3) In resolving any disputes involving the production of documents or access to property, the presiding officer may direct that the materials objected to be

presented to him for *in camera* inspection.

(c) In comparative broadcast proceedings involving applicants for only new facilities, on the date established for filing notices of appearance (see § 1.221 of this part), all applicants will serve the materials listed in the Standard Document Production Order and the Standardized Integration Statement on all other parties in the case.

(1) *Standard document production order.* The following documents must be produced or objected to on grounds of privilege on the notice of appearance deadline (Unless otherwise directed by the presiding officer, copies of these documents should not be filed with the presiding officer):

(i) All formation and organizational documents, including articles of incorporation, by laws, partnership agreements, voting rights, proxies, and any amendments to the foregoing documents;

(ii) All minutes of meetings relating to the application;

(iii) All documents relating to the rights or plans of persons or entities to purchase an interest in the applicant or of current owners to alineate their interests;

(iv) All documents relating to pledges, mortgages, security interests, or other encumbrances of any kind with respect to the applicant;

(v) All bank letters and other financing documents with the dollar amounts unexpurgated;

(vi) All documents relating to the applicant's proposed transmitter site;

(vii) All documents relating to communications by proposed integrated principals with respect to their proposed participation in the management of the station and the disposition of their current employment;

(viii) All documents relating to prior integration pledges made by principals who propose to be integrated into the management of the station at issue;

(ix) All documents relating to communications by and between principals of the applicant concerning the application, including communications between active and passive principals;

(x) Representative documents relating to enhancement credits and preferences sought by the applicant's principals for local residence, civic participation, past broadcast experience, minority/female status, and the like;

(xi) All documents relating to commitments to divest other media interests; and

(xii) All documents that identify or describe the principals who are responsible for completing the application, arranging financing, obtaining the applicant's transmitter site, publishing the required notices, establishing the local public inspection file, and retaining lawyers, engineers, and other professionals.

(2) *Standardized integration statement.* The following information must be provided by all applicants on the notice of appearance deadline (Copies of this statement should be filed with the presiding officer and served on all parties to the proceeding):

(i) The ownership structure of the applicant, *i.e.*, whether it is a partnership, limited partnership, or a corporation (if a corporation, indicate whether it has voting and non-voting stock);

(ii) The ownership percentage of each owner;

(iii) The identity of the owners who will work at the proposed station, what titles and duties they will have, how many hours they will work per week, and how they will reconcile any current business interests or employment with that commitment to the station;

(iv) All other media interests held by the persons identified under paragraph (c)(2)(ii), of this section;

(v) Whether the integrated owners will claim credit for minority or female ownership and if so, specifically on what basis;

(vi) Whether the integrated owners will claim credit for local residence and civic involvement in the city of license or service area and if so, specifically on what basis (including a detailed chronology of past residence and a description of civic activities and their duration);

(vii) Whether the integrated owners will claim credit for previous broadcast experience and if so, provide a detailed list of the stations they worked at, the titles and duties they had, and the years in which they were so employed; and

(viii) Whether the applicant will claim a daytimer preference and if so, specifically on what basis.

(3) *Supplemental document production.* Parties may request additional relevant documents, not called for in the Standard Document Production Order, at any time after the release of the designation order. Initial supplemental requests for documents must be filed no later than ten days after the notice of appearance deadline. Supplemental document requests will be handled under the procedures established in paragraph (a) of this section. To facilitate the resolution of disputes concerning the production of

documents, the presiding officer may convene a pre-hearing conference to hear argument on and dispose of any such disputes.

4. Section 1.1111 is amended by revising paragraph (c) to read as follows:

§ 1.1111 Return or refund of charges.

* * * * *

(c) Broadcast applicants that pay the hearing fee before the release of an order designating them for hearing are entitled to a refund of that fee, upon request therefor, whenever

(1) The application is granted without being designated for hearing;

(2) The application is dismissed, voluntarily or involuntarily, prior to designation for hearing, in the order designating the case for hearing, or for failure to file a Notice of Appearance (see § 1.221 of this part);

(3) The applicant is the only applicant designated in the proceeding that files a Notice of Appearance and that single remaining applicant is immediately grantable or grantable upon deletion of any matters specified in the designation order and requiring resolution (see § 1.229 of this part); or

(4) A settlement agreement filed with the presiding judge by the Notice of Appearance deadline provides for the dismissal of all but one of the applicants, and the single remaining applicant is immediately grantable. However, if the single remaining applicant is not immediately grantable, it is not entitled to a refund of the hearing fee unless all outstanding matters can be deleted (see § 1.229 of this part).

(5) However, under paragraphs, (c) (3) or (4) of this section, hearing fees will be retained by the Commission in any case requiring a decision on the merits of an applicant's post-designation amendment or evidentiary showing, whether by Summary Decision or otherwise. See §§ 1.251 and 1.267 of this part.

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

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

16. Section 73.1620 is amended by adding a new paragraph (g) to read as follows:

§ 73.1620 Program tests.

* * * * *

(g) *Reports required.* In their application for a license to cover a construction permit (FCC Form 302) and on the first anniversary of the commencement of program tests, applicants for new broadcast facilities granted as a result of a settlement or

other decision in a comparative proceeding must report.

(1) Any deviations from comparative proposals relating to integration of ownership and management and diversification of the media of mass communication contained in their application for a construction permit at the time such application was granted; and

(2) Any deviations from an active/passive ownership structure proposed in their application for a construction permit at the time such application was granted.

(3) The reports referred to in paragraphs (g)(1) and (2) of this section shall not be required in any case in which the order granting the application relieved the applicant of the obligation to adhere to such proposals.

17. Section 73.3571 is amended by adding new paragraphs (c)(1) and (c)(2) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(c) * * *

(1) In addition to announcing the acceptance of mutually exclusive applications and establishing a date for the filing of petitions to deny such applications, the public notice referred to in paragraph (c) of this section will also announce the date on which all mutually exclusive applicants (including the previously accepted lead applicant) will be required to pay the hearing fee established in part 1 of these rules, 47 CFR 1.1104(2)(c) of this chapter. The date for fee payment shall be at least 30 days after the date established for petitions to deny.

(2) Whenever the public notice announces the acceptance of an application that is mutually exclusive with a renewal application, it shall also announce that the mutually exclusive applicants and the renewal applicant will be required to pay the hearing fee on the date established in the public notice.

* * * * *

18. Section 73.3572 is amended by adding new paragraphs (c)(1) and (c)(2) to read as follows:

§ 73.3572 Processing of TV broadcast low power TV, TV translator and TV booster station applications.

* * * * *

(c) * * *

(1) In addition to announcing the acceptance of mutually exclusive applications and establishing a date for the filing of petitions to deny such applications, the public notice referred

to in paragraph (c) of this section will also announce the date on which all mutually exclusive applicants (including the previously accepted lead applicant) will be required to pay the hearing fee established in part 1 of these rules, 47 CFR 1.1104(1)(c) of this chapter. The date for fee payment shall be at least 30 days after the date established for petitions to deny.

(2) Whenever the public notice announces the acceptance of an application that is mutually exclusive with a renewal application, it shall also announce that the mutually exclusive applicants and the renewal applicant will be required to pay the hearing fee on the date established in the public notice.

* * * * *

19. Section 73.3573 is amended by adding new paragraphs (g)(2)(i) and (g)(2)(ii) to read as follows:

§ 73.3573 Processing FM broadcast and FM translator station applications.

* * * * *

(g) * * *
(2) * * *

(i) In addition to announcing the acceptance of mutually exclusive applications and establishing a date for the filing of petitions to deny such applications, the public notice referred to in paragraph (g)(2) of this section will also announce the date on which all mutually exclusive applicants will be required to pay the hearing fee established in part 1 of these rules, 47 CFR 1.1104(2)(c) of this chapter. The date for fee payment shall be at least 30 days after the date established for petitions to deny.

(ii) Whenever the public notice announces the acceptance of an application that is mutually exclusive with a renewal application, it shall also announce that the mutually exclusive applicants and the renewal applicant will be required to pay the hearing fee on the date established in the public notice.

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[FR Doc. 91-225 Filed 1-8-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-137; RM-7095, RM-7106]

Radio Broadcasting Services; Morris and Pontiac, Illinois

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 229A for Channel 276A at Pontiac, Illinois, and modifies the license of Station WJEZ(FM) to specify operation on the alternate Class A channel, at the request of Livingston County Broadcasters, Inc. In addition, Channel 276A is allotted to Morris, Illinois, at the request of Nelson Enterprises, Inc. See 55 FR 11411, March 28, 1990. Channel 229A can be substituted for Channel 276A at Pontiac, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction 2.2 kilometers (1.4 miles) east at Station WJEZ's currently licensed site. Channel 276A can be allotted to Morris, Illinois, in compliance with the Commission minimum distance separation requirements with a site restriction of 8.2 kilometers (5.1 miles) southeast, in order to avoid a short-spacing to Station WVVX(FM), Channel 276A, Highlands, Illinois. The coordinates for Channel 229A at Pontiac are North Latitude 40-52-31 and West Longitude 88-36-11. The coordinates for Channel 276A at Morris are North Latitude 41-18-39 and West Longitude 88-22-08. With this action, this proceeding is terminated.

DATES: Effective February 19, 1991; the window period for filing applications for Morris, Illinois, will open on February 20, 1991, and close on March 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-137, adopted December 12, 1990, and released January 4, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 276A at Morris, and by

removing Channel 276A and adding Channel 229A at Pontiac.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-488 Filed 1-8-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AB25

Addition of Five National Wildlife Refuges to the Lists of Open Areas for Hunting, Three to the List for Sport Fishing, and Pertinent Refuge-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Technical amendment.

SUMMARY: The Fish and Wildlife Service corrects procedural codification errors in the final rule relating to the addition of five national wildlife refuges to the list of open areas for hunting, three to the list for sport fishing, and pertinent refuge-specific regulation that appeared in the *Federal Register* on September 6, 1990 (55 FR 36647).

EFFECTIVE DATE: This amendment is effective on January 9, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Karges, U.S. Fish and Wildlife Service, Division of Refuges, MS 670-ARLSQ, 1849 C Street, NW., Washington, DC 20240; telephone: 703/358-1744.

SUPPLEMENTARY INFORMATION:

List of Subjects in 50 CFR Part 32

Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.12 [Amended]

2. Section 32.12 is amended by redesignating paragraphs (f)(4) (1) and (2) as paragraphs (f)(4) (i) and (ii).

§ 32.22 [Amended]

3. Section 32.22 is amended by redesignating paragraphs (dd)(4) (1) and