

*D. Other Matters*

9. Comparative Consideration of Character. MAP suggests that we consider non-disqualifying misconduct in comparative proceedings. We continue to believe that character is essentially a matter of an applicant's basic qualifications. Our experience has been that there is little to be gained from comparative consideration of non-FCC related misconduct that is insufficient to warrant disqualification. Thus, as we determined in the 1986 Policy Statement, the public interest is better served by eliminating such considerations from comparative proceedings. See Alden Communications Corp., 3 FCC Rcd 5047 (Rev. Bd. 1988), recon. denied, 3 FCC Rcd 6601, 6602 (Rev. Bd. 1988), review denied, 4 FCC Rcd 5413 (1989), aff'd., D.C. Cir. 89-1488 (Oct. 30, 1990) (mem.). FCC-related misconduct will, however, continue to be relevant to a renewal applicant's ability to obtain a renewal expectancy. See 1986 Policy Statement, 102 FCC 2d at 1232 n.125.

10. Conditions on Grants. MAP asks that we announce a new policy of deferring action on applications where appropriate and specifically conditioning all grants on the review of any subsequent adjudication of potentially disqualifying conduct, including misconduct by station assignors or transferors. The 1990 Character Policy Statement indicated that, in appropriate cases, we would condition grants on the outcome of pending proceedings in other forums. We do not believe it would be appropriate to adopt a policy of blanket conditions in all cases or to adopt a general deferral policy. Rather, we will review all such cases on their merits to determine whether a condition is appropriate and the parameters of any such conditions.

11. Section 312(a). Cox argues that midterm reports of adverse adjudications are unnecessary as the Communications Act does not empower the Commission to revoke a license on the basis of such adjudications. Section 312(a)(2) provides that the Commission may revoke a station license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application." 47 U.S.C. § 312(a)(2). We believe that the provision permits the revocation of a license for "conditions" occurring during the license term. See *Radio Para La Raza*, 27 RR 2d 836, 840 (1973) (section 312(a)(2)) permits the Commission to look at events following the grant of an application; cf. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, n.3 (1969) (a

requirement of operation in the public interest is implicit in section 312(a)(2) revocation authority).

*E. Conclusion*

12. Accordingly, it is ordered that the Petition for reconsideration filed jointly by the Media Access Project and the Telecommunications Research and Action Center is denied.

13. It is further ordered that the Petition for Reconsideration filed jointly by Chronicle Broadcasting Co., Post-Newsweek Stations, Inc., The Providence Journal Company, Shenandoah Valley Educational Television Corporation, and the Spartan Radiocasting Company is granted to the extent indicated above, and is denied in all other respects.

14. It is further ordered that § 1.65(c) of the Commission's rules IS amended as set forth below effective July 5, 1991.<sup>6</sup>

15. The action herein is taken pursuant to sections 4(i), 303(r), 308(b), 312, 319(a) and 403 of the Communications Act of 1934, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

*List of Subjects in 47 CFR Part 1*

Administrative practice and procedure, Radio.

*Rule Changes*

Part 1 of title 47 of the CFR is amended as follows:

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

Authority: Secs. 4, 303, 48 Stat. 1068, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.65 is amended by revising paragraph (c) to read as follows:

**§ 1.65 Substantial and significant changes in information furnished by applicants to the Commission.**

(c) All broadcast permittees and licensees must report to the Commission any adverse finding or adverse final action taken by any court or administrative body that involves conduct bearing on the permittee's or licensee's character qualifications and that would be reportable in connection with an application for renewal as reflected in the renewal form. The report required by this subsection must be filed

<sup>6</sup> Licensees are currently required to file § 1.65(c) reports within 30 days of the relevant adjudication. In light of our decision to increase the time within which to file such reports, we will not enforce the existing rule prior to the effective date of the revised rule.

within 90 days of the date that the permittee or licensee becomes knowledgeable of any such reportable adverse findings or adverse final actions not previously reported to the Commission. Permittees and licensees bear the obligation to make reasonable, good faith efforts to become knowledgeable of any such reportable adjudicated misconduct.

[FR Doc. 91-13151 Filed 6-4-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Parts 1 and 73**

[Docket No. 90-264; FCC 91-154]

**Practice and Procedure; Comparative Hearing Process for New Applicants**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Memorandum Opinion and Order provides clarification of and certain procedural adjustments to the Report and Order which was intended to substantially reduce the time consumed in the conduct of comparative hearings and agency review in cases involving applicants for new broadcast facilities. This action was taken in order to speed service to the public.

**EFFECTIVE DATE:** This rule is effective on July 1, 1991, except § 73.1620 which is effective August 1, 1991. The modification of the Ruarch policy announced in the Report and Order, as modified in this Memorandum Opinion and Order, shall become effective on August 1, 1991.

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

**SUPPLEMENTARY INFORMATION:** The collection of information contained in the rules adopted in the Report and Order was 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. The Office of Management and Budget approved that collection of information on March 22, 1991. The amendment to the collection of information adopted in this Memorandum Opinion and Order is not a substantive or material modification that would require further approval from OMB under the Paperwork Reduction Act.

OMB Number: 3060-0471

**Title: Proposals To Reform the Commission's Comparative Hearing Process To Expedite the Resolution of Cases (Memorandum Opinion and Order in General Docket 90-264)**

**Summary of Memorandum Opinion and Order**

This is a summary of the Commission's Memorandum Opinion and Order, adopted May 9, 1991, and released May 15, 1991, FCC 91-154. The full text of this Commission Memorandum Opinion 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 Memorandum Opinion and Order may also be purchased from the Commission's copy contractor.

1. This Memorandum Opinion and Order provides clarification of and certain procedural adjustments to the Report and Order in this proceeding, reflecting the Commission's efforts to reduce substantially the time consumed in the conduct of comparative hearings and agency review in cases involving applicants for new broadcast facilities. 56 F.R. 787 (January 9, 1991); 6 FCC Rcd 157. Petitions for reconsideration of the action were filed by: the Federal Communications Bar Association (FCBA); Timothy K. Brady, *et al.* (Brady); Black Citizens for a Fair Media, *et al.* (BCFM); and the National Association for the Advancement of Colored People, *et al.* (NAACP).<sup>1</sup>

2. The FCBA requests clarification of rule changes regarding the payment of the hearing fee before an application is designated for hearing. The following clarification is provided. Hearing fee payments will be triggered by the Public Notice announcing the acceptance of an application for filing. That Public Notice will also specify a date for the payment of the hearing fee. All commercial broadcast applications that have not been the subject of such a Public Notice released prior to July 1, 1991 (the effective date of the rule change), must pay the hearing fee on a date established in the Public Notice announcing the acceptance of the application for filing. All commercial broadcast applications that have been the subject of such a Public Notice released prior to July 1, 1991, will be required to pay their hearing fee by July 15, 1991, unless such applications are designated for hearing before that date.

<sup>1</sup> No oppositions to the Petitions for Reconsideration were filed, but on March 8, 1991, Jeffrey Rochlis (Rochlis) filed comments on the NAACP petition. No reply pleadings were filed.

All applicants designated for hearing before July 15, 1991, should pay their hearing fee with their Notices of Appearance. Appendix A of the Memorandum Opinion and Order specifies the procedures for payment of the hearing fee by applicants that were accepted for filing before the effective date of this rule change. We wish to emphasize that this hearing fee payment requirement also applies to renewal applicants that face a comparative challenge.<sup>2</sup>

3. The Report and Order limited the ability of a successful applicant to "withdraw" divestiture and integration proposals under the Ruarch policy to cases in which a "global" settlement was entered into and filed with the presiding judge on or before the notice of appearance deadline. The FCBA suggests that a later date, after the completion of discovery, would be more appropriate. Recognizing that discovery often aids the settlement process, we will apply the Ruarch policy and permit applicants to withdraw divestiture and integration proposals in conjunction with settlement agreements filed up until the date established for the exchange of exhibits in the case, that is, after the completion of discovery in the case. After the exhibit exchange date, the successful applicant will be expected to fulfill its divestiture and integration proposals.

4. The FCBA and Brady offer a number of suggestions to fine tune the revised discovery procedures. The FCBA suggests that the initial exchange of documents and integration statements be delayed until a date five days after the notice of appearance deadline. We agree that a five-day delay would permit applicants to avoid the burden and costs of serving materials on applicants that no longer wish to participate in the case, and we will amend our rules accordingly.<sup>3</sup> The FCBA also seeks

<sup>2</sup> The challenging applicant must pay its hearing fee on the date established in the Public Notice announcing the acceptance for filing of that application, and we believe it is only fair that the renewal applicant should pay its hearing fee at the same time. Thus, the date for fee payment established in the Public Notice of acceptance of the challenging application will also be the date on which the renewal applicant must pay its hearing fee. Where the challenging application was accepted for filing in a Public Notice released before July 1, 1991, appendix A specifies the method of hearing fee payment for both the renewal applicant and challenger.

<sup>3</sup> With further regard to the standardized document production order and integration statement, we agree with the FCBA's comment that disputes over the sufficiency of an exchange should not be elevated to a question of whether an applicant should be dismissed. However, a failure to exchange any materials would constitute a failure to prosecute, resulting in the dismissal of an applicant. Moreover, as the FCBA suggests, the

clarification of the requirement to submit "initial" supplemental document requests within ten days of the first document exchange. That requirement is intended to expedite requests for additional relevant documents that were not covered in the categories of the standardized document production order or are revealed in the materials exchanged pursuant to that order or in the standardized integration statement. The failure to request such documents within the ten-day period would not foreclose an applicant's right to request other documents identified in future discovery, including depositions.

5. With regard to the conduct of depositions, the FCBA suggests that we reinstate the 21-day notice rule for depositions of an applicant's principals,<sup>4</sup> and Brady suggests that we should further limit the location of depositions, requiring them to be held in the community of license of the proposed station, unless the parties agree to some other location. Under our new discovery rules, an applicant's principals are on notice that they may be called for depositions during the period commencing with the initial document exchange and ending 90 days after the release of the designation order. In these circumstances, requiring an additional 21-days' advance notice of the depositions of principals would needlessly delay the proceedings. We believe that, within the period provided for depositions, the applicants and their attorneys will be able to work out reasonable schedules for the conduct of depositions of principals. Nor do we believe that limiting the deponent's option to select the deposition location would facilitate discovery. Our purpose in creating the option is to eliminate, to the extent possible, disputes over the location of deposition sessions. Whether sessions are held in Washington, DC or the proposed community of license, someone will have to travel to the session. We agree with Brady that bringing all principals and attorneys together in one place for deposition sessions may have a salutary effect on the settlement process, but we do not believe that we should mandate such collective deposition sessions by limiting the deponent's option to the proposed community of license.

6. The FCBA asks us to make it clear that a party requesting enlargement of

submission of a standard integration statement after designation for hearing does not give rise to an opportunity to upgrade any previously submitted integration proposal.

<sup>4</sup> Twenty one days notice is required for depositions of persons who are not principals of an applicant in the case.

issues is not foreclosed from supplementing a discovery request included in such motions on the basis of the opposing party's responsive pleading or information developed during the discovery on the enlarged issue. Such supplemental requests are not foreclosed, although any such requests are subject ultimately to control by the presiding judge.

7. The Report and Order amended § 1.248 of our rules to make it clear that ALJs 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. The FCBA suggests that the application of this new rule will engender litigation over the need for oral testimony and thereby waste, rather than save, time. Although there may be cases that involve disputes over the need for a witness's testimony, we believe that, overall, more time will be saved by reasonable limitations on oral testimony than would be lost in the resolution of such disputes. In this regard, we note that a determination of whether a witness's testimony is needed resides in the exercise of the presiding judge's sound discretion.

8. With regard to pleading cycles, the FCBA argues that the 45 days provided for in the Report and Order is inadequate to prepare meaningful findings that would be of assistance to the ALJ in preparing the Initial Decision.<sup>5</sup> We continue to believe that in the routine case, proposed findings can reasonably be prepared within the 45-day time guideline. However, it was not our intention to circumscribe the exercise of an ALJ's discretion to set longer time limits, particularly in cases involving numerous parties and complex questions of fact and/or law. Similarly, we believe that the 25 page limit is reasonable for exceptions to initial decisions, but the Review Board may grant waivers of that limit, particularly in complex cases.

9. The Report and Order gave ALJs the authority to impose forfeitures up to the maximum amount permitted by statute. See 47 U.S.C. 503(b)(2)(A). The FCBA argues that forfeitures for serious misconduct should be applied by the Mass Media Bureau, pursuant to a uniform policy so that applicants are not assessed different forfeitures for

essentially the same misconduct. We are confident that ALJs, utilizing decisions in other forfeiture cases, will exercise this authority equitably, and any party that believes it has been treated unfairly can avail itself of review procedures. Thus, we believe that the presiding judge is in the best position to make a determination on the underlying misconduct and assess a forfeiture, if appropriate.

10. However, we are concerned that applicants not be able to escape possible forfeiture liability by simply dismissing their applications, by settlement or otherwise, before the ALJ has rendered a decision on the forfeiture. Thus, where an applicant subject to a potential forfeiture is dismissed, the Commission will determine whether a forfeiture is appropriate in light of the alleged misconduct, and we are amending § 1.80 of our rules to provide that any order dismissing an applicant facing a potential forfeiture will be forwarded to the Commission for possible action. 47 CFR 1.80. Under section 1.117, the Commission will have 40 days to determine whether it should pursue the forfeiture. 47 CFR 1.117.<sup>6</sup>

11. The FCBA raises a number of questions on how the new procedures will be applied to proceedings in progress. Generally, in the cases designated for hearing before the effective date of these changes, the timing of discovery and the setting of other procedural dates are under the control of presiding judges. We are confident that, in the exercise of their discretion, ALJs will not permit such cases to languish on a "slow track" while subsequently designated cases are expedited by the application of these procedures.

12. BCFM seeks clarification of the requirement in the new section 73.1620(g) that certain reports must be filed by applicants "granted as a result of a settlement or other decision in a comparative hearing." The petitioner believes that the reporting requirement should be applicable to the successful applicant whenever the grant is a result of a decision on the comparative merits of the applicants, a settlement, or the other applicants are simply dismissed. The petitioner also asks that the one-year holding period relating to the transfer or assignment of construction

permits and/or licenses be applied in a similar fashion. See 47 CFR 73.3597(a)(1).

13. It was not our intention to apply the reporting requirements of section 73.1620(g) to applicants granted after designation for a comparative hearing where the competing applications are abandoned through inaction or voluntary dismissal. The reporting requirement was adopted to ensure that applicants fulfill comparative promises that were either relied upon by the Commission in deciding the case or taken into consideration by competitors in post-designation settlements. In this regard, our experience indicates an applicant's decision simply to abandon its application normally is influenced by factors that bear no relation to a competitor's comparative promises. We shall therefore require reports only from applicants that were granted after consideration of their comparative merits in a hearing or pursuant to post-designation settlements. Having determined that § 73.1620(g) should not be amended to read as suggested by BCFM, the petitioner's assertion that § 73.3597 be similarly amended is moot.<sup>7</sup> However, we will amend § 73.1620(g) to make it clear that reports are not required from applicants unless their grant was the result of a post-designation settlement or a decision favoring them after comparative consideration of mutually exclusive applicants.<sup>8</sup>

14. The Report and Order noted that certain suggestions offered by the NAACP dealing with comparative evaluation factors were beyond the scope of this proceeding. Petitioner argues that its proposals were within the scope of our invitation to commenters to submit "other proposals designed to achieve [expedition in the resolution of comparative broadcast proceedings]." Proposals to Reform the Comparative Hearing Process to Expedite the Resolution of Cases (NPRM), 5 FCC Rcd 4050, 4055 (1990). In the alternative, the NAACP asks that its filing be treated as a petition for rulemaking. In comments on the NAACP petition, Rochlis requests that we establish a "pioneer's preference" in FM comparative

<sup>7</sup> In any event, although BCFM and other parties suggested modification of the holding period rule in this proceeding, no change in that provision was proposed, and we consider the matter beyond the scope of this proceeding.

<sup>8</sup> The reporting requirement in section 73.1620(g) was approved by the Office of Management and Budget on March 22, 1991. OMB No. 3060-0471. The amendment to the rule being adopted herein is not a "substantive or material modification" that would require further approval from OMB under the Paperwork Reduction Act. See 5 CFR 1320.11(h).

<sup>5</sup> The Report and Order provided 60 days for the filing of findings and replies, including 45 days for findings and 15 days for replies. We noted, however, that if delays in obtaining hearing transcripts is not a factor, findings should be filed within 30 days.

<sup>6</sup> After hearings, an ALJ's decision to assess a forfeiture would be rendered under section 1.80(g) of our rules. 47 CFR 1.80(g). However, where the ALJ does not render a decision on the forfeiture matter because the application is dismissed, any Commission decision on the forfeiture matter would be rendered pursuant to § 1.80(f) of our rules. 47 CFR 1.80(f).

proceedings. The preference would be available to the applicant that successfully petitioned for rulemaking to add the channel to the FM Table of Allotments. See 47 CFR part 202.

15. This proceeding is not intended to focus on the criteria by which the Commission makes comparative evaluations between mutually exclusive broadcast applicants. Rather, it is concerned with the process by which facts relevant to those criteria are brought before the Commission for decision with the goal of expediting those decisions. Both the NAACP and Rochlis note that we had specifically proposed changes to the Ruarch policy and the Anax doctrine. See Ruarch Associates, 103 FCC 2d 1178 (1986); Anax Broadcasting, Inc., 87 FCC 2d 483 (1981); see also NPRM 5 FCC Rcd at 4052, 4053 (1990). However, neither our Ruarch nor Anax proposals evidenced any intention on the part of the Commission to change the underlying comparative criteria. Moreover, the rule and policy changes adopted in the Report and Order in this proceeding were limited to the procedural aspects of comparative proceedings, not the criteria that would be used to evaluate the comparative merits of applicants. 6 FCC Rcd at 159-160, 161-162 (1990). Although the changes in the comparative criteria proposed by the NAACP and Rochlis could also serve to expedite hearings by making the comparative process less attractive for participation by some potential competing applicants, we believe that any changes in our comparative criteria would be inappropriate in this proceeding.

16. The rule changes being adopted on reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to impose no new or modified requirements or burdens on the public.

17. Accordingly, it is ordered that the Petition for Partial Reconsideration filed by the Federal Communications Bar Association is granted to the extent indicated above and is denied in all other respects.

18. It is further ordered that the Petition for Partial Reconsideration filed by Timothy K. Brady, et al. is denied.

19. It is further ordered that the Petition for Reconsideration and/or Clarification filed by Black Citizens for a Fair Media, et al. is granted insofar as clarification is provided above and is denied in all other respects.

20. It is further ordered that the Petition for Reconsideration, or in the Alternative Petition for Rulemaking filed by the National Association for the Advancement of Colored People, et al. is

denied insofar as it requests reconsideration, but that pleading and the comments thereon filed by Jeffrey Rochlis will be treated as a petition for rulemaking.

21. It is further ordered that parts 1 and 73 of the Commissions rules, 47 CFR parts 1 and 73, are amended as set forth below.

22. It is further ordered that the rule changes adopted in the Report and Order in this proceeding, as modified herein, shall become effective on July 1, 1991, except that the modification of the Ruarch policy enunciated in the Report and Order in this proceeding, as modified herein shall become effective on August 1, 1991, and it shall apply to all requests for approval of agreements filed on that date and thereafter.

23. It is further ordered that all commercial broadcast applications that have been the subject of a public notice released prior to July 1, 1991, announcing the acceptance for filing of mutually exclusive applications, shall pay their hearing fee by July 15, 1991, unless an order designating such applications for hearing is released before that date. All applicants designated for hearing by orders released before July 15, 1991, should pay their hearing fee with their Notices of Appearance.

24. 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.

#### List of Subjects

##### 47 CFR Part 1

Administrative practice and procedure.

##### 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,  
Acting Secretary.

#### Rule Changes

47 CFR parts 1 and 73 are amended as follows:

#### PART 1—[AMENDED]

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

Authority: Secs. 4, 303, 48 Stat. 1068, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.80 is amended by adding a new paragraph (g)(3) to read as follows:

#### § 1.80 Forfeiture proceedings.

(g) \* \* \*

(3) Where the possible assessment of a forfeiture is an issue in a hearing case to determine which pending application should be granted, and the applicant facing a potential forfeiture is dismissed pursuant to a settlement agreement or otherwise, and the presiding judge has not made a determination on the forfeiture issue, the order of dismissal shall be forwarded to the attention of the full Commission. Within the time provided by § 1.117, the Commission may, on its own motion, proceed with a determination of whether a forfeiture against the dismissing applicant is warranted. If the Commission so proceeds, it will provide the applicant with a reasonable opportunity to respond to the forfeiture issue (see paragraph (f)(3) of this section) and make a determination under the procedures outlined in paragraph (f) of this section.

3. Section 1.221 is amended by removing paragraph (c)(1) and adding new paragraphs (f) and (g) to read as follows:

#### § 1.221 Notice of hearing; appearances.

(f) A fee must accompany each written appearance filed with the Commission in certain cases designated for hearing. See subpart C, part 1 for the amount due. Except as provided in paragraph (g) of this section, the fee must accompany each written appearance at the time of its filing and must be in conformance with the requirements of subpart G of the rules. A written appearance that does not contain the proper fee, or is not accompanied by a deferral request as per § 1.1115 of the rules, shall be dismissed and returned to the applicant by the fee processing staff. The presiding judge will be notified of this action and may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the correct fee within the original 20 day filing period.

Note: If the parties file a settlement agreement prior to filing the Notice of Appearance or simultaneously with it, the hearing fee need not accompany the Notice of Appearance. In filing the Notice of Appearance, the applicant should clearly indicate that a settlement agreement has been filed. (The fact that there are ongoing negotiations that may lead to a settlement does not affect the requirement to pay the

fee.) If a settlement agreement is not effectuated, the Presiding Judge will require immediate payment of the fee.

(g) In comparative broadcast proceedings involving applicants for new facilities, where the hearing fee was paid before designation of the applications for hearing as required by the Public Notice described at § 73.3571(c), 73.3572(d), or 73.3573(g) of this chapter, a hearing fee payment should not be made with the filing of the Notice of Appearance.

4. Section 1.229 is amended by revising paragraph (e) to read as follows:

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

(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.

(1) 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.

(2) The moving party may file supplemental discovery requests on the basis of information provided in responsive pleadings or discovered as a result of initial discovery on the enlarged issue. The grant or denial of any such supplemental requests and the timing of the completion of such supplemental discovery are subject to the discretion of the presiding judge.

(3) The 30-day time limit for completion of discovery on enlarged issues shall not apply where 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.

5. Section 1.325 is amended by revising paragraph (c) introductory text, (c)(1) introductory text, (c)(2) introductory text and (c)(3) to read as follows:

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

(c) In comparative broadcast proceedings involving applicants for only new facilities, 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 that have filed Notices of Appearance. The exchange of these materials must be accomplished within five days after the date established for filing notices of appearance (see § 1.221).

(1) *Standard Document Production Order.* The following documents must be produced or objected to on grounds of privilege (Unless otherwise directed by the presiding officer, copies of these documents should not be filed with the presiding officer):

(2) *Standardized Integration Statement.* On the same day that documents are exchanged pursuant to the Standardized Document Production Order, the following information must also be provided by all applicants (Copies of this statement should be filed with the presiding officer and served on all parties to the proceeding that have filed Notices of Appearance):

(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. Supplemental requests for documents based on materials exchanged pursuant to the Standardized Document Production Order and Standardized Integration Statement must be filed no later than ten days after those standardized exchanges. Other supplemental document requests must be filed no later than ten days after receipt of the information on which those requests are based. 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.

**PART 73—[AMENDED]**

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

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

7. Section 73.1620 is amended by revising paragraph (g) introductory text 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 that were granted after designation for a comparative hearing as a result of a post designation settlement or a decision favoring them after comparative consideration must report.

[FR Doc. 91-12791 Filed 6-4-91; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 90**

[DA 91-647]

**Private Land Mobile Radio Services; Acceptance of 220-222 MHz Private Land Mobile Applications**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; order.

**SUMMARY:** The Chief, Private Radio Bureau, released this Order freezing acceptance of 220-222 MHz applications. It was necessary to take this action to begin the sizable administrative task of processing the more than 50,000 applications received during the first month applications were accepted for land mobile use in the band, to prepare for any necessary lotteries for applications in the band, and to permit the Bureau to continue to process pending applications in all radio services it administers without severely adversely affecting speed of service.

**DATES:** Applications for the 220-222 MHz band filed on or after May 25, 1991, are not being accepted for filing.

**FOR FURTHER INFORMATION CONTACT:** Federal Communications Commission, Private Radio Bureau, Licensing Division, Consumer Assistance Branch (717) 337-1212.

**SUPPLEMENTARY INFORMATION:**

**Order**

Adopted: May 24, 1991; Released: May 24, 1991.

By the Chief, Private Radio Bureau:  
1. On March 14, 1991, the Commission adopted service rules for private land mobile use of the 220-222 MHz spectrum.<sup>1</sup> The Commission provided

<sup>1</sup> Report and Order, PR Docket No. 89-552, FCC 91-74 (April 17, 1991).

that applications for this new spectrum would be accepted beginning the second day after publication of a summary of the Report and Order in PR Docket No. 89-552 was published in the Federal Register. The summary of that Report and Order was published in the Federal Register on April 29, 1991.<sup>2</sup> The Commission began accepting applications for the 220-222 MHz frequency band on May 1, 1991.

2. The Licensing Division typically receives in the neighborhood of 10,000 applications per month for the land mobile radio services administered by the Bureau. In the past three weeks, however, the Licensing Division has received well over 50,000 applications just for the 220-222 MHz band. This influx of applications has created, at a minimum, an additional workload of one-half year for the entire Licensing Division.

3. Effective midnight May 24, 1991, no new applications for the 220-222 MHz band will be accepted for filing by the Federal Communications Commission. Applications for the 220-222 MHz band filed on or after May 25, 1991, will not be accepted for filing.<sup>3</sup>

<sup>2</sup> 56 FR 19596 (1991).

<sup>3</sup> Because imposition of this freeze on acceptance of 220-222 MHz applications is procedural in nature, it is not subject to the notice and comment provisions of the Administrative Procedure Act (APA). See *Kessler v. FCC*, 328 F.2d 673 (DC Cir. 1963). Further, because this freeze is procedural in nature it is not subject to the 30 day effective date provisions of the APA. In any event, good cause exists to place the freeze on acceptance of 220-222 MHz applications in immediate effect because advance notification would likely prompt the filing of additional applications and thus defeat the administrative purpose of the freeze.

4. This action is necessary to permit the Bureau to begin the sizable administrative task of processing the applications for the 220-222 MHz band and preparing for any necessary lotteries for applications in this band.<sup>4</sup> This action is also necessary to permit the Bureau to continue to process pending applications in all other radio services it administers without severely adversely affecting speed of service.

5. This action will not place prospective applicants for the 220-222 MHz frequency band at a disadvantage, because applications are considered on a first-come, first-served basis from day-to-day.<sup>5</sup> Any applications that would have been filed from this point forward would have been considered only after all other pending applications had been resolved. The relative position of any new applications with respect to all previously filed applications will thus remain unchanged irrespective of whether these new applications were filed in the near future or, alternatively, at such time as the freeze is lifted. Additionally, prospective applicants are not prejudiced by this action because they will have complete access to any

available spectrum remaining after we have completed processing of applications already on file.

6. This action is taken pursuant to the provisions of section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), and §§ 0.131 and 0.331 of the Commission's Rules, 47 CFR 0.131 and 0.331.<sup>6</sup> This freeze on Commission acceptance of applications for the 220-222 MHz band will remain in full force and effect until such time as additional action is taken to resume acceptance of these applications.

7. For further information contact the Consumer Assistance Branch, Licensing Division, Private Radio Bureau, (717) 337-1212.

#### List of Subjects in 47 CFR Part 90

Business and industry, Radio, Trunking.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91-13250 Filed 6-4-91; 8:45 am]

BILLING CODE 6712-01-M

<sup>4</sup> This action is not in any way related to the Emergency Motion for Stay in PR Docket No. 89-552 filed by Walker, Bordelon, Hamlin, Theriot & Hardy on behalf of itself and Ashton R. Hardy and Bradford D. Carey. This action is purely administrative in nature, and reflects no consideration of the merits of the pending Emergency Motion for Stay. Nor does it constitute any ruling upon the pending Emergency Motion for Stay.

<sup>5</sup> See Report and Order, PR Docket No. 89-552, FCC 91-74 (April 17, 1991), at paras. 56-59; 47 CFR 90.711(a); Public Notice, Report No. 12686 (April 17, 1991), at pages 4-5.

<sup>6</sup> The Commission has broad discretion to freeze acceptance of new applications. *Kessler v. FCC*, 328 F.2d 673 (DC Cir. 1963). This action is akin to and consistent with prior actions taken by the Commission and by delegated authority to freeze acceptance of applications in certain radio services where the public interest, convenience and necessity warrant such action. See e.g., Order, 5 FCC Rcd 2136 (1990) (action by the Commission restricting acceptance of AM broadcast applications); Public Notice, 1 FCC Rcd 1264 (1986) (action by the Commission placing a temporary freeze on acceptance of AM daytime broadcast applications); Public Notice, Report No. 1207 (December 6, 1983) (action by the Private Radio Bureau suspending filing of 2.5 GHz applications).

# Proposed Rules

Federal Register

Vol. 56, No. 108

Wednesday, June 5, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 207 and 220

[Docket No. R-0732; Regulations G and T]

#### Amendments to Margin Regulations To Accommodate Deposit Requirements of Regulated Clearing Agencies

May 30, 1991.

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is proposing to amend Regulation G and Regulation T to exclude from the limitations of the margin rules the deposit of margin securities with clearing agencies regulated by the Commodity Futures Trading Commission or the Securities and Exchange Commission, provided these deposits are made in connection with action by the clearing agency to issue options or to guarantee performance on futures contracts or options on futures contracts.

**DATES:** Comments should be received on or before July 15, 1991.

**ADDRESSES:** Comments, which should refer to Docket No. R-0732, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or delivered at the C Street entrance between 8:45 a.m. and 5:15 p.m. weekdays to room B-2223. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation (202) 452-2781; for the hearing impaired, only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, (202) 452-3544.

**SUPPLEMENTARY INFORMATION:** Regulation G requires registration of persons other than banks, brokers or

dealers who extend or maintain credit (over prescribed minimum amounts) secured directly or indirectly by margin stock. If the credit is to purchase or carry margin stock, limitations are placed on the valuation of the stock collateral. Regulation T prohibits a broker-dealer from borrowing in the ordinary course of business on the collateral of exchange-traded stock from any lender other than a bank. On prior occasions the Board has found guarantees and certain business relationships to involve an extension of credit. Therefore, registration of a clearing firm under Regulation G would be required under the Board's traditional view of the term if margin securities are deposited as collateral. Broker-dealers would also be prohibited from borrowing from the non-bank lenders under that reasoning.

In May, 1983, in conjunction with a completely revised and simplified Regulation T (48 FR 23161, May 24, 1983), the Board added a provision permitting clearing members of an options clearing agency to deposit certain margin stock with the clearing agency as the required margin for options transactions. No changes in Regulation G were made at that time as the persons who would make the deposit were all subject to Regulation T and it was felt that the corollary Regulation G issue was implicitly decided. In March of 1984, the provision was expanded (49 FR 9559) in conjunction with an SEC action on the issue. The present rule provides that the provisions of Regulation T do not apply to the deposit of securities with an options clearing agency registered with the SEC provided the deposit complies with the rules approved by the SEC.

Options and futures exchanges trade standardized contracts and the clearing agency guarantees settlement. A person wishing to offset an obligation or take a profit in these markets does not need to search for the original counterparty to the contract as the clearing agency has been substituted for both sides. This fungibility of contracts and substitution enables a person to pay the price or receive the profit at any time as long as someone is willing to take similar action on the other side of the contract. The deposit, changed daily at both futures and options clearing agencies, reflects the current value of the underlying

product, security or index established by trades on the exchange.

The proposed rule will eliminate the need for registration and regulation under Regulation G of clearing agencies for the regulated futures markets, provided the deposit complies with rules of the CFTC. It will accord the clearing arm of the CME and other futures clearing agencies the same exemptive treatment in performing the clearing function that the Board has given to an options clearing agency.

#### Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

#### Paperwork Reduction Act

No additional reporting requirements or modifications to existing reporting requirements are proposed.

#### List of Subjects

##### 12 CFR Part 207

Banks, Banking, Brokers, Credit, Federal Reserve System, Investment companies, Investments, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 220

Banks, Banking, Bonds, Brokers, Commodity futures, Credit, Federal Reserve System, Foreign currencies, Investment companies, Investments, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 3, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w), the Board proposes to amend 12 CFR parts 207 and 220 as follows:

#### PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

1. The authority citation for part 207 continues to read as follows:

Authority: Secs. 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w).

2. Section 207.1 is amended by adding a new sentence at the end of paragraph (b):

**§ 207.1 Authority, purpose, and scope.**

(b) Purpose and scope. \* \* \* This part does not apply to clearing agencies regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission that accept deposits of margin stock in connection with the issuance of options on any security, certificate of deposit, securities index or foreign currency or the guarantee of contracts of sale of a commodity for future delivery or options on such contracts.

**PART 220—CREDIT BY BROKERS AND DEALERS**

1. The authority citation for part 220 continues to read as follows:

**Authority:** Secs. 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w).

2. In § 220.14 the section heading and paragraph (b) are revised to read as follows:

**§ 220.14 Clearance of Securities, Options, and Futures.**

(b) *Deposit of securities with a clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options or futures clearing agency for the purpose of meeting the deposit requirements of the agency if:

(1) The clearing agency issues options on any security, certificate of deposit, securities index or foreign currency or guarantees performance of contracts of sale of a commodity for future delivery or options on such contracts;

(2) The clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

By order of the Board of Governors of the Federal Reserve System, May 30, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-13192 Filed 6-4-91; 8:45 am]

BILLING CODE 6210-01-M

**DEPARTMENT OF JUSTICE**

**28 CFR Part 20**

[Order No. 1502-91]

**Juvenile Records**

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would modify 28 CFR 20.32(a)-(b) to authorize inclusion of juvenile records in the FBI criminal history information system. The current rule excludes offenses committed by juvenile offenders unless a juvenile is tried as an adult. The proposed change is necessary to implement an element of the comprehensive violent crime control initiative that was announced by President Bush in 1989.

**DATES:** Comments must be received by July 5, 1991.

**ADDRESSES:** Comments should be addressed to: Paul J. McNulty, Acting Director, Office of Policy Development, room 4234, Main Justice Building, Constitution Ave. & 10th St., NW., Washington, DC, 20530.

**FOR FURTHER INFORMATION CONTACT:** David J. Karp, Attorney Advisor, Office of Policy Development, United States Department of Justice, at (202) 514-3273. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Section 534(a)(1) of title 28, United States Code, provides that the Attorney General shall "acquire, collect, classify, and preserve identification, criminal identification, crime, and other records." The function of maintaining criminal history record information is delegated to the Federal Bureau of Investigation pursuant to 28 CFR 0.85(b) and 20.31.

The proposed amendment, authorizing inclusion of juvenile records in the FBI records system, is necessary to implement an element of the President's comprehensive violent crime control initiative which calls on the states to "maintain records and report on all serious crimes committed by juveniles who frequently continue their criminal careers into adulthood, but often escape early identification as repeat offenders and recidivists because their juvenile records are not reported." White House Fact Sheet of May 15, 1989, at 6. The same point was endorsed by the Attorney General's Task Force on Violent Crime in 1981, Final Report at 82-83, which stated that states should be encouraged to make available criminal history information for juveniles convicted of serious crimes, and that such information should be entered into the FBI criminal records system.

Empirical data confirms that the Unavailability of juvenile criminal records is a substantial concern in relation to serious offenders. For example, the Bureau of Justice Statistics has estimated that 55 percent of armed robbers in state prisons in 1986 had previously been sentenced to probation or incarceration as a juvenile, and that 15 percent had a prior juvenile, but no adult, sentence. Corresponding figures for other crime categories include the following:

| Offense                 | Prior juvenile sentence (percent) | Prior juvenile sentence only (percent) |
|-------------------------|-----------------------------------|----------------------------------------|
| Homicide.....           | 38                                | 13                                     |
| Sexual assault.....     | 36                                | 11                                     |
| Aggravated assault..... | 43                                | 9                                      |
| Robbery.....            | 54                                | 15                                     |
| Kidnapping.....         | 50                                | 15                                     |
| Burglary.....           | 58                                | 9                                      |
| Larceny.....            | 49                                | 8                                      |
| Arson.....              | 43                                | 14                                     |

Similarly, information compiled by the Federal Bureau of Investigation in the Uniform Crime Reports shows that a substantial proportion of arrests for serious crimes involve juveniles. In 1988, for example, the figures for arrests reported to the FBI showed that persons under the age of 18 accounted for 1,634,790 arrests, comprising over 16 percent of the total. The corresponding figures concerning reported arrests for particular crimes in 1988 include the following:

| Offense                  | Arrests of persons under 18 | Percent of all arrests (percent) |
|--------------------------|-----------------------------|----------------------------------|
| Willful homicide.....    | 1,765                       | 11                               |
| Forcible rape.....       | 4,118                       | 14                               |
| Aggravated assault.....  | 38,536                      | 13                               |
| Robbery.....             | 24,337                      | 22                               |
| Burglary.....            | 111,284                     | 34                               |
| Larceny-theft.....       | 351,133                     | 30                               |
| Motor vehicle theft..... | 61,301                      | 40                               |
| Arson.....               | 6,216                       | 43                               |

The availability of records of juvenile arrests and convictions for law enforcement purposes is currently limited, however, by a rule that generally bars inclusion of juvenile records in the national system of criminal records maintained by the FBI. The proposed amendment would address this problem by authorizing the inclusion of juvenile records for serious crimes in the FBI records system.

Section 20.32 of title 28, Code of Federal Regulations, defines the offenses that will be accepted in the FBI records system. Paragraph (a) of the rule