

the frequency the applicant intends to use and that the frequency coordination requirements specified in §90.175 for selection and use of this frequency have been met and a minimum of ten business days has passed between submission of the application to the Commission and the onset of operation.

(c) An applicant proposing to operate an itinerant station or an applicant seeking the assignment of authorization or transfer of control of a license for an existing station below 470 MHz or in the 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) may operate the proposed station during the pendency of the application for a period not to exceed one hundred eighty (180) days upon the filing of a properly completed formal Form 601 application that complies with §90.127 of this part. Conditional authority ceases immediately if the application is dismissed by the Commission. All other categories of applications listed in §90.175(i) of this part that do not require evidence of frequency coordination are excluded from the provisions of this section.

(d) Conditional authorization does not prejudice any action the Commission may take on the subject application. Conditional authority is accepted with the express understanding that such authority may be modified or canceled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. Consistent with §90.175(g) of this part, the applicant assumes all risks associated with operation under conditional authority, the termination or modification of conditional authority, or the subsequent dismissal or denial of its application. Authority reverts back to the original licensee if an assignee or transferee's conditional authority is canceled.

(e) The transmissions of new stations operating pursuant to conditional authority shall be identified by a temporary call sign consisting of the prefix "WT" followed by the applicant's local seven digit business telephone number as provided in §2.302. Transmissions by applicants for the modification, assignment of authorization or transfer of

control of an existing station shall be identified by the station's call sign.

[51 FR 14997, Apr. 22, 1986, as amended at 54 FR 50239, Dec. 5, 1989; 58 FR 44956, Aug. 25, 1993; 58 FR 62291, Nov. 26, 1993; 59 FR 59959, Nov. 21, 1994; 62 FR 18924, Apr. 17, 1997; 63 FR 68964, Dec. 14, 1998; 69 FR 17959, Apr. 6, 2004]

#### SPECIAL RULES GOVERNING FACILITIES USED TO PROVIDE COMMERCIAL MOBILE RADIO SERVICES

SOURCE: 59 FR 59959, Nov. 21, 1994; 63 FR 68964, Dec. 14, 1998, unless otherwise noted.

NOTE: The following rules (§90.165 through §90.169) govern applications, licensing, and operation of radio facilities in the 220–222 MHz (subpart T), Business Radio (subpart D), 929–930 MHz Paging (subpart P), and Specialized Mobile Radio (subpart S) services that are used to provide commercial mobile radio services (see §§20.3 and 20.9 of this chapter). Compliance with the rules relating to applications and licensing of facilities on paging-only channels in the Business Radio Service (see §90.75(c)(10)) and 929–930 MHz paging channels (see §90.494(a),(b)) is not required prior to August 10, 1996. Compliance with §90.168 is also not required prior to August 10, 1996 for reclassified commercial mobile radio service providers who are to be regulated as private carriers until August 10, 1996 as provided in the Second Report and Order in GN Docket No. 93–252, 9 FCC Rcd 2348 (1994), paras. 280–284. The licensing and operation of radio facilities in the 220–222 MHz (subpart T), Business Radio (subpart D), 929–930 MHz Paging (subpart P), and Specialized Mobile Radio (subpart S) services that are used to provide commercial mobile radio services are also subject to rules elsewhere in this part that apply generally to Private Land Mobile Radio Services. In the case of any conflict between rules set forth in §§90.165 through 90.169 and other rules in this part, §§90.165 through 90.169 apply. 14–23. New §§90.165 through 90.169 are added to subpart G to read as follows:

#### §90.165 Procedures for mutually exclusive applications.

Mutually exclusive commercial mobile radio service applications are processed in accordance with part 1 of this chapter and with the rules in this section, except for mutually exclusive applications for licenses in the 220–222 MHz service and the 929–930 MHz Paging service, which are processed in accordance with the rules in subpart P and subpart T of this part.

Two or more pending applications are mutually exclusive if the grant of one

application would effectively preclude the grant of one or more of the others under Commission rules governing the services involved.

(a) *Separate applications.* Any applicant that files an application knowing that it will be mutually exclusive with one or more applications should not include in the mutually exclusive application a request for other channels or facilities that would not, by themselves, render the application mutually exclusive with those other applications. Instead, the request for such other channels or facilities should be filed in a separate application.

(b) *Filing groups.* Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent consideration. The Commission may dismiss as defective (pursuant to § 1.934 of this chapter) any mutually exclusive application(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (c)(3) of this section. A filing group is one of the following types:

(1) *Renewal filing group.* A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications (see section 1.949 of this chapter).

(2) *Same-day filing group.* A same-day filing group comprises all mutually exclusive applications whose filing date is the same day, which is normally the filing date of the first-filed applications(s).

(3) *Thirty-day notice and cut-off filing group.* A 30-day notice and cut-off filing group comprises mutually exclusive applications whose filing date is no later than thirty (30) days after the date of the Public Notice listing the first-filed application(s) (according to the filing dates) as acceptable for filing.

(4) *Window filing group.* A window filing group comprises mutually exclusive applications whose filing date is within an announced filing window. An announced filing window is a period of time between and including two specific dates, which are the first and last dates on which applications (or amend-

ments) for a particular purpose may be accepted for filing. In the case of a one-day filing window, the two dates are the same. The dates are made known to the public in advance.

(c) *Procedures.* Generally, the Commission may grant one application in a filing group of mutually exclusive applications and dismiss the other application(s) in the filing group that are excluded by the grant, pursuant to § 1.935 of this chapter.

(1) *Selection methods.* In selecting the application to grant, the Commission may use competitive bidding, random selection, or comparative hearings, depending on the type of applications involved.

(2) *Dismissal of applications.* The Commission may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 1.934 of this chapter, either before or after employing selection procedures.

(3) *Type of filing group used.* Except as otherwise provided in this part, the type of filing group used in processing of two or more mutually exclusive applications depends on the purpose(s) of the applications.

(i) If one of the mutually exclusive applications is a timely-filed application for renewal of an authorization, a renewal filing group is used.

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification and none of the mutually exclusive applications is a timely-filed application for renewal, a same-day filing group is used.

(iii) If all of the mutually exclusive applications filed on the earliest filing date are applications for initial authorization, a 30-day notice and cut-off filing group is used.

(4) *Disposition.* If there is only one application in any type of filing group, the Commission may grant that application and dismiss without prejudice any mutually exclusive applications not in the filing group. If there is more than one mutually exclusive application in a filing group, the Commission disposes of these applications as follows:

(i) Applications in a renewal filing group. All mutually exclusive applications in a renewal filing group are designated for comparative consideration in a hearing.

(ii) Applications in a 30-day notice and cut-off filing group.

(A) If all of the mutually exclusive applications in a 30-day notice and cut-off filing group are applications for initial authorization, the Commission administers competitive bidding procedures in accordance with subpart Q of part 1 of this chapter. After such procedures, the application of the successful bidder may be granted and the other applications may be dismissed without prejudice.

(B) If any of the mutually exclusive applications in a 30-day notice and cut-off filing group is an application for modification or an application for facilities, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iii) Applications in a same-day filing group. If there are two or more mutually exclusive applications in a same-day filing group, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iv) Applications in a window filing group. Applications in a window filing group are processed in accordance with the procedures for a 30-day notice and cut-off filing group in paragraph (c)(4)(ii) of this section.

(d) *Terminology.* For the purposes of this section, terms have the following meanings:

(1) The “filing date” of an application is the date on which that application was received in a condition acceptable for filing or the date on which

the most recently filed major amendment to that application was received, whichever is later, excluding major amendments in the following circumstances:

(i) The major amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(ii) The major amendment as received is defective or otherwise found unacceptable for filing; or

(iii) The application being amended has been designated for hearing and the Commission or the presiding officer accepts the major amendment.

(2) An “application for initial authorization” is:

(i) Any application requesting an authorization for a new system or station;

(ii) Any application requesting authorization for an existing station to operate on an additional channel, unless the additional channel is for paired two-way radiotelephone operation, is in the same frequency range as the existing channel(s), and will be operationally integrated with the existing channel(s) such as by trunking; or

(iii) any application requesting authorization for a new transmitter at a location more than 2 kilometers (1.2 miles) from any existing transmitters of the applicant licensee on the requested channel or channel block.

[59 FR 59959, Nov. 21, 1994, as amended at 63 FR 68964, 68965, Dec. 14, 1998]

#### § 90.168 Equal employment opportunities.

Commercial Mobile Radio Services licensees shall afford equal opportunity in employment to all qualified persons, and personnel must not be discriminated against in employment because of sex, race, color, religion, or national origin.

(a) *Equal employment opportunity program.* Each licensee shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of employment policy and practice.

(1) Under the terms of its program, each licensee shall: