

## § 101.23

### § 101.23 Waiver of rules.

Waiver of these rules may be granted upon application or on the Commission's own motion in accordance with § 1.925 of this chapter.

[63 FR 68981, Dec. 14, 1998]

### § 101.31 Temporary and conditional authorizations.

#### (a) Operation at temporary locations.

(1) Authorizations may be issued upon proper application for rendition of temporary service to subscribers under the following conditions:

(i) When a fixed station, authorized to operate at temporary locations, is to remain at a single location for more than 6 months, an application for a station authorization designating that single location as the permanent location shall be filed at least 90 days prior to the expiration of the 6 month period;

(ii) The station shall be used only for rendition of communication service at a remote point where the provision of wire facilities is not practicable within the required time frame; and

(iii) The antenna structure height employed at any location shall not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height for each location has been obtained from the Commission prior to erection of the antenna. See § 101.125.

(2) Applications for authorizations to operate stations at temporary locations under the provisions of this section shall be made upon FCC Form 601. Blanket applications may be submitted for the required number of transmitters.

(3) Except for operations in the 17.8–19.7 GHz band, the licensee of stations which are authorized pursuant to the provisions of paragraph (a) of this section shall notify the Commission at least five (5) days prior to installation of the facilities stating:

(i) The call sign, manufacturer's name, type or model number, output power and specific location of the transmitter(s);

(ii) The maintenance location for the transmitter;

(iii) The location of the transmitting or receiving station with which it will

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communicate and the identity of the correspondent operating such facilities;

(iv) The exact frequency or frequencies to be used;

(v) The public interest, convenience and necessity to be served by operation of the proposed installation;

(vi) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly shall be given to the Commission;

(vii) A notification shall include compliance with the provisions of §§ 101.21(e) and 101.21(f) when operations are to be conducted in the area of other terrestrial microwave stations or within the coordination distance contours of a fixed earth station; and

(viii) Where the notification contemplates initially a service which is to be rendered for a period longer than 90 days, the notification shall contain a showing as to why application should not be made for regular authorization.

(4) Less than 5 days advance notice may be given when circumstances require shorter notice provided such notice is promptly given and the reasons in support of such shorter notice are stated.

(5) A copy of the notification shall be kept with the station license.

(6) Operations in the 17.8–19.7 GHz band are prohibited in the areas defined in § 1.924 of this chapter. Operations proposed in the areas defined in § 1.924 of this chapter may not commence without prior specific notification to, and authorization from, the Commission. Such notification will contain the information specified in paragraph (a)(3) of this section.

(b) *Conditional authorization.* (1) An applicant for a new point-to-point microwave radio station(s) or a modification of an existing station(s) in the 3,700–4,200; 5,925–6,425; 6,525–6,875; 10,550–10,680; 10,700–11,700; 11,700–12,200; 12,200–12,700; 12,700–13,200; 13,200–13,250; 17,700–19,700; and 21,200–23,600 MHz bands (see § 101.147 for specific service usage) may operate the proposed station(s) during the pendency of its applications(s) upon the filing of a properly completed formal application(s) that complies

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with subpart B of part 101 if the applicant certifies that the following conditions are satisfied:

(i) The frequency coordination procedures of §101.103 have been successfully completed;

(ii) The antenna structure(s) has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by subpart B of part 17 of this chapter; or the antenna or tower structure does not exceed 6.1 meters above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied by the Federal Aviation Administration and cleared by the FCC;

(iii) The grant of the application(s) does not require a waiver of the Commission's rules;

(iv) The applicant has determined that the facility(ies) will not significantly affect the environment as defined in §1.1307 of this chapter;

(v) The station site does not lie within 56.3 kilometers of any international border, within a radio "Quiet Zone" identified in §1.924 of this chapter or, if operated on frequencies in the 17.8–19.7 GHz band, within any of the areas identified in §1.924 of this chapter;

(vi) If operated on frequencies in the 10.6–10.68 GHz band, the station site does not lie within any of the following regions:

Name of region	Dimensions=radius in kilometers	Center-point
Kitt Peak, Arizona .....	60	N31-57-22; W111-36-42
Big Pine, California .....	60	N37-13-54; W118-16-34
Vandenberg AFB, California .....	75	N34-43-00; W120-34-00
Denver, Colorado .....	150	N39-43-00; W104-46-00
Washington, DC .....	150	N38-48-00; W76-52-00
Eglin AFB, Florida .....	50	N30-29-00; W86-32-00
Mauna Kea, Hawaii .....	60	N19-48-16; W155-27-29
North Liberty, Iowa .....	60	N41-46-17; W91-34-26
Maryland Point, Maryland .....	60	N38-22-26; W77-14-00
Hancock, New Hampshire .....	60	N42-56-01; W71-59-12
Los Alamos, New Mexico .....	60	N35-46-30; W106-14-42
Pie Town, New Mexico .....	60	N34-18-04; W108-07-07
Socorro, New Mexico .....	160	N34-04-43; W107-37-04
WSMR, New Mexico .....	75	N32-23-00; W106-29-00
Minot AFB, North Dakota .....	80	N48-15-00; W101-17-00
Arecibo, Puerto Rico .....	160	N18-20-37; W66-45-11
Fort Davis, Texas .....	60	N30-38-06; W103-56-39
St. Croix, Virgin Islands .....	60	N17-45-31; W64-35-03
Brewster, Washington .....	60	N48-07-53; W119-40-55
Green Bank, West Virginia .....	160	N38-25-59; W79-50-24

Note: Coordinates are referenced to North American Datum 1983 (NAD83).

(vii) The filed application(s) does not propose to operate in the 21.2–23.6 GHz band with an E.R.P. greater than 55 dBm pursuant to §101.147(s); and

(viii) The filed application(s) is consistent with the proposal that was coordinated pursuant to §101.103.

(2) Conditional authority ceases immediately if the application(s) is returned by the Commission because it is not acceptable for filing.

(3) A conditional authorization pursuant to paragraphs (b)(1) and (b)(2) of this section is evidenced by retaining the original executed conditional licensing Certification Form with the station records. Conditional authorization does not prejudice any action the

Commission may take on the subject application(s). Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. An applicant operating pursuant to this conditional authority assumes all risks associated with such operation, the termination or modification of the conditional authority, or the subsequent dismissal or denial of its application(s).

(4) The Certification Form, or a copy thereof, must be posted at each station

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operating pursuant to this section consistent with §101.215.

[61 FR 26677, May 28, 1996, as amended at 62 FR 55538, Oct. 27, 1997; 63 FR 10779, Mar. 5, 1998; 63 FR 68981, Dec. 14, 1998; 65 FR 38327, June 20, 2000]

### PROCESSING OF APPLICATIONS

#### §101.45 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" exists when the levels of §101.105 are exceeded, or when there is a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) A common carrier application, except in the Local Multipoint Distribution Service and in the 24 GHz Service, will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable for filing by whichever "cut-off" date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application established the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed applica-

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tion. (For example, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.)

(d) Private operational fixed point-to-point microwave applications for authorization under this part will be entitled to comparative consideration with one or more conflicting applications in accordance with the provisions of §1.227(b)(4) of this chapter.

(e) An application otherwise mutually exclusive with one or more previously filed applications, but filed after the appropriate date prescribed in paragraphs (b) or (d) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(f) For purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by §1.929 of this chapter), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to §101.51 of this part), and the Commission or the presiding officer accepts the amendment pursuant to §1.927 of this chapter;

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing or by comparative evaluation pursuant to §101.51 provided that the amendment does not create new or additional frequency conflicts;

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the "cut-off" requirements of this section is granted;

(4) The amendment reflects only a change in ownership or control which results from an agreement under §1.935 of this chapter whereby two or more