

Federal Communications Commission

§ 21.38

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing:

(i) A waiver of the applicant's right to a formal hearing;

(ii) A request and agreement that, in order to avoid the delay and expense of a comparative formal hearing, the Commission should exercise its judgment to select from among the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and

(iii) The signature of a principal (and the principal's attorney if represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning the applicant's proposal relative to the comparative criteria.

(3) Within thirty (30) days following the due date for filing this information, the Commission will accept concise and factual argument on the competing proposals from the rival applicants, potential customers, and other knowledgeable parties in interest.

(4) Within fifteen (15) days following the due date for the filing of comments, the Commission will accept concise and factual replies from the rival applicants.

(5) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants shall have the right to be represented.

(6) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the Commission will issue a decision granting one (or more) of the proposals which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will

deny the other application(s). This decision shall be considered final.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5994, Feb. 13, 1985; 52 FR 37780, Oct. 9, 1987; 60 FR 36552, July 17, 1995]

§§ 21.36-21.37 [Reserved]

LICENSE TRANSFERS, MODIFICATIONS, CONDITIONS AND FORFEITURES

§ 21.38 Assignment or transfer of station authorization.

(a) No station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity holding any such license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.

(b) For purposes of this section, transfers of control requiring Commission approval shall include any and all transactions that:

(1) Change the party controlling the affairs of the licensee, or

(2) Affect any change in a controlling interest in the ownership of the licensee, including changes in legal or equitable ownership, or

(c) Requests for transfer of control or assignment authority shall be submitted on the application form prescribed by § 21.11 of this chapter, and shall be accompanied by the applicable showings required by §§ 21.13, 21.15, 21.17 and 21.39 of this chapter.

(d) The Commission shall be promptly notified in writing when a licensee is voluntarily or involuntarily placed in bankruptcy or receivership and when an individual licensee, a member of a partnership which is a licensee, or a person directly or indirectly in control of a corporation which is a licensee, dies or becomes legally disabled. Within thirty days after the occurrence of such bankruptcy, receivership, death or legal disability, an application of involuntary assignment of such license, or involuntary transfer of control of such corporation, shall be filed with

§ 21.39

47 CFR Ch. I (10–1–03 Edition)

the Commission, requesting assignment or transfer to a successor legally qualified under the laws of the place having jurisdiction over the assets involved.

(e) The assignor of a station licensed under this part may retain no right of reversion or reassignment of the license and may not reserve the right to use the facilities of the station for any period whatsoever. No assignment of license will be granted or authorized if there is a contract or understanding, express or implied, pursuant to which a right of reversion or reassignment of the license or right to use the facilities are retained as partial or full consideration for the assignment or transfer.

(f) No special temporary authority, or any rights thereunder, shall be assigned or otherwise disposed of, directly or indirectly, voluntarily or involuntarily, without prior Commission approval.

(g) An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of control or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing).

[52 FR 37780, Oct. 9, 1987, as amended at 54 FR 11953, Mar. 23, 1989; 59 FR 9101, Feb. 25, 1994]

§ 21.39 Considerations involving transfer or assignment applications.

(a) A Multipoint Distribution Service conditional license may not be assigned or transferred prior to the completion of construction of the facility and the timely filing of the certification of completion of construction. However, consent to the assignment or transfer of control of a Multipoint Distribution Service conditional license

may be given prior to the completion of construction and the timely filing of the certification of completion of construction where:

(1) The assignment or transfer does not involve a substantial change in ownership or control of the authorized Multipoint Distribution Service facilities; or

(2) The assignment or transfer of control is involuntary due to the licensee's bankruptcy, death, or legal disability.

(b) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses whenever applications (except those involving *pro forma* assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities that were:

(1) Authorized following a comparative hearing and have been operated less than one year, or;

(2) Involve facilities that have not been constructed, or;

(3) Involve facilities that were authorized following a random selection proceeding in which the successful applicant received preference and that have been operated for less than one year.

At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the acquisition of the license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(c) If a proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests, any showing requested under paragraph (a) of this section shall include an additional exhibit which: