

## §21.16

on or after September 15, 1995, each application in the Point-to-Point Radio, Local Television Transmission and Digital Electronic Message Service (excluding user stations) proposing a new or replacement antenna (excluding omni-directional antennas) shall include an antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC-ID number that indicates that the pattern is on file with the Commission. Multipoint Distribution Service applicants who filed applications on or after September 15, 1995 must provide related information in completing an MDS long-form application.

[44 FR 60534, Oct. 19, 1979, as amended at 46 FR 23449, Apr. 27, 1981; 52 FR 37778, Oct. 9, 1987; 58 FR 11797, Mar. 1, 1993; 60 FR 36551, July 17, 1995; 60 FR 57366, Nov. 15, 1995; 61 FR 4364, Feb. 6, 1996; 61 FR 26673, May 28, 1996]

## §21.16 [Reserved]

### §21.17 Certification of financial qualifications.

Each application for a new license and each application for a major modification of an existing station shall contain a certification that the applicant has or will have the financial ability to meet the expected costs of constructing the facilities within the time allowed and the estimated operating expenses for a period of twelve months.

[52 FR 37778, Oct. 9, 1987]

## §21.18 [Reserved]

### §21.19 Waiver of rules.

Waivers of these rules may be granted upon application or on the Commission's own motion. A request for waiver shall contain a statement of reasons sufficient to justify a waiver. A waiver will not be granted except upon an affirmative showing that:

(a) The underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or

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(b) The unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

[52 FR 37778, Oct. 9, 1987]

### §21.20 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) The application does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.

(b) By way of illustration only, and not in any way limiting the scope of paragraph (a), the following are examples of common deficiencies which result in defective applications under paragraph (a):

(1) The application is not properly executed;

(2) The submitted filing fee (if a filing fee is required) is insufficient;

(3) The application does not demonstrate how the proposed radio facilities will serve the public interest, convenience or necessity;

(4) The application does not demonstrate compliance with the special requirements applicable to the radio service involved;

(5) The application does not certify the availability of the proposed station site.

(6) The application does not include the environmental assessment required for any significant environmental impact under the Commission's environmental rules (part 1, subpart I);

(7) The application does not specify the polarization and, where applicable, the antenna orientation azimuth and distance;

(8) The application does not include all necessary exhibits;

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(9) The application is filed after the cutoff date prescribed in §21.31 or §21.914 of this part;

(10) The application proposes the use of a frequency not allocated to such use; or

(11) The application does not contain the FCC Registration Number (FRN) as required under subpart W of part 1 of this part.

(c) Applications considered defective under paragraph (a) of this section may be accepted for filing if:

(1) The application is accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict; or

(2) The Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 5294, Feb. 20, 1987; 52 FR 37779, Oct. 9, 1987; 55 FR 46009, Oct. 31, 1990; 58 FR 11797, Mar. 1, 1993; 61 FR 26674, May 28, 1996; 66 FR 47896, Sept. 14, 2001]

### §21.21 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, the applicant's successor or assignee, or on behalf of or for the benefit of the same applicant, the applicant's successor or assignee.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37779, Oct. 9, 1987]

### §21.22 Repetitious applications.

(a) Where an applicant has been afforded an opportunity for a hearing with respect to a particular application for a new station, or for an extension or enlargement of a service or facilities, and the Commission has, after hearing or default, denied the applica-

tion or dismissed it with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by the applicant's successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission denying a particular application, another application for the same class of station and for the same area, in whole or in part, filed by the same applicant or by the applicant's successor or assignee, or on behalf of or for the benefit of the original parties in interest, will not be considered until the final disposition of such appeal.

[44 FR 60534, Oct. 19, 1979, as amended at 52 FR 37779, Oct. 9, 1987]

### §21.23 Amendment of applications.

(a)(1) Any pending application may be amended as a matter of right if the application has not been designated for hearing, or for comparative evaluation pursuant to §21.35, or for the random selection process, provided, however, that the amendments must comply with the provisions of §21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(2) A Multipoint Distribution Service application tentatively selected for qualification review by the random selection process may be amended as a matter of right up to 14 days after the date of the public notice announcing the tentative selection, provided, however, that the amendments must comply with the provisions of §21.29 as appropriate and the Commission has not otherwise forbidden the amendment of pending applications.

(3) Provided, however, applications may not be amended if the amendments seek more than a *pro forma* change of ownership or control (bankruptcy, death or legal disability) of a pending Multipoint Distribution Service application and any amendment or application will be dismissed if the amendment or application seeks more