

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of
Sections 204(a) and 204(c) of the
Telecommunications Act of 1996
(Broadcast License Renewal Procedures)

ORDER

Adopted: April 12, 1996;

Released: April 12, 1996

By the Commission:

1. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 ("Telecom Act").¹ The Telecom Act adopts new Section 309(k) of the Communications Act, which eliminates comparative renewal hearings and directs the Commission to grant a broadcaster's renewal application if statutory renewal standards are met. We are presently in the midst of a renewal cycle for radio stations, which commenced with the filing of radio renewal applications on June 1, 1995, and the initial round of television station renewal applications is due to be filed on June 1, 1996.² It is therefore desirable to conform our rules to these particular provisions of the Telecom Act as promptly as possible.

2. *Background.* For decades, the Commission has entertained competing applications in the renewal context.³ Under comparative renewal procedures, if one or more such competing applications were filed, the Commission was required to consider the applications comparatively to determine which applicant would best serve the public interest, convenience and necessity.⁴ The Commission is required to afford renewal applicants and competing mutually exclusive applicants a full comparative hearing under Section 309(e) of the Communications Act, 47 U.S.C. § 309(e), and *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).⁵

3. *New Two-Step Renewal Procedure.* Section 204(a) of the Telecom Act effects a major change in the way the Commission processes renewals. With respect to broadcast renewal applications filed after May 1, 1995,⁶ the statute eliminates comparative renewals and establishes, instead, a new two-step renewal procedure. It also codifies specific standards for the Commission to apply in considering broadcasters' renewal applications. In particular, new Section 309(k) states:

(1) . . . If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license --

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

(2) . . . If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

(3) . . . If the Commission determines, after notice and opportunity for a hearing as provided in subsection (e), that a licensee has failed to meet the requirements specified in paragraph (1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall --

(A) issue an order denying the renewal application filed by such licensee under Section 308; and

(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

(4) . . . In making the determinations specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.

47 U.S.C. § 309(k).

4. Additionally, Section 204(a)(2) of the Telecom Act amends Section 309(d) of the Communications Act, 47 U.S.C. § 309(d), to make the standard for filing petitions to deny conform to the statutory renewal standards. Thus, the statutory renewal standards are made applicable to the petitioner's required showing and the Commission's consequent findings in the case of a petition to deny a renewal application filed after the statutory effective date. As detailed in the accompanying Appendix, our rules will be modified to conform to the renewal procedures and standards adopted in the Telecom Act.

5. The Telecom Act does not define the terms contained in the renewal standards embodied in Section 309(k), and we likewise do not define those terms in this Order. It is

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

² The current radio renewal cycle will end when the last round of radio applications are filed on April 1, 1998. The upcoming renewal cycle for television will end April 1, 1999.

³ For a history of the comparative renewal process, see *Second*

Further Notice of Inquiry and Notice of Proposed Rule Making in BC Docket No. 81-742, 3 FCC Rcd 5179, 5186-88 (1988).

⁴ See *id.* at 5185-86.

⁵ See *Citizens Communications Center v. FCC*, 447 F.2d 1201 (D.C. Cir. 1971), *clarified*, 463 F.2d 822 (D.C. Cir. 1972).

⁶ See Section 204(c) of the Telecom Act.

our present intent to continue to apply existing policy statements and case law, refining these as appropriate on a case-by-case basis, in interpreting the statutory terms that govern the new renewal process. If we determine at some future time that further clarification is appropriate, we shall conduct such proceedings as may be warranted.

6. *Administrative Matters.* We are revising the rules as detailed in the accompanying Appendix without providing prior notice and an opportunity for comment. For applications filed after May 1, 1995, the revisions simply reflect the changes mandated by the applicable provisions of the Telecom Act eliminating comparative renewals and codifying certain renewal standards. We find that notice and comment procedures are unnecessary, and that this action therefore falls within the "good cause" exception of the Administrative Procedure Act ("APA").⁷ The rule changes adopted in this Order do not involve discretionary action by the Commission. Rather, they simply reiterate in our rules specific terms set forth in legislation. Additionally, with respect to "the revisions that involve rules of agency organization and procedure, the notice and comment requirements of the APA are inapplicable."⁸

7. *Termination of Comparative Renewal Rule Making.* In light of the elimination of the comparative renewal procedure, we will terminate BC Docket No. 81-742, in which the Commission is considering reforming the comparative renewal process.⁹ We believe that it would not represent the most productive use of our resources to conclude Docket No. 81-742 since it will apply only to a limited number of comparative renewal proceedings.

8. *Effective Dates.* Pursuant to the Telecom Act, Section 309(k) will be applied to renewal applications filed after May 1, 1995, and the rule changes made in the Appendix to implement the new renewal provisions of the Telecom Act reflect the statutory effective date. Pending comparative renewal proceedings and mutual exclusivities involving applications filed on or before May 1, 1995 will be concluded pursuant to the current rules, and accordingly, we will leave intact procedural provisions of the current rules that refer to comparative renewal proceedings until those pending proceedings and exclusivities are finally resolved. We wish to reiterate that our failure, in the attached Appendix, to amend or eliminate a rule that refers to or applies to comparative renewal proceedings results only from the need to conclude those ongoing proceedings. We wish to make clear that applications filed on or before May 1, 1995 will be subject to our current renewal standards and procedures, while applications filed after May 1, 1995 will be subject to the new renewal provisions adopted in Section 204 of the Telecom Act.

9. *Ordering Clause.* Accordingly, IT IS ORDERED that, pursuant to Section 204 of the Telecommunications Act of 1996, and to Sections 4(i) and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), 303(r), Parts 1 and 73 of the Commission's Rules is amended as set forth in the Appendix. The rule changes will become effective

upon publication of this Order in the Federal Register.¹⁰ IT IS FURTHER ORDERED that BC Docket No. 81-742 is hereby terminated.

10. For additional information concerning this proceeding, contact Mania K. Baghdadi, Mass Media Bureau, Policy and Rules Division, Legal Branch, (202) 418-2130, or via the Internet at mbaghdad@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

Rule Changes

Part 1 of Title 47 of the Code of Federal regulations is amended to read as follows:

PART 1 -- PRACTICE AND PROCEDURE

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

AUTHORITY: 47 U.S.C. 151, 154, 303 and 309(j) unless otherwise noted.

2. Section 1.227 is amended by revising paragraph (b)(6) as follows:

§ 1.227 Consolidations

* * * * *

(b) * * *

(6) An application which is mutually exclusive with an application for renewal of license of a broadcast station filed on or before May 1, 1995 will be designated for comparative hearing with such license renewal application if it is substantially complete and tendered for filing no later than the date prescribed in § 73.3516(e).

Part 73 of Title 47 of the U.S. Code of Federal regulations is amended to read as follows:

PART 73 -- RADIO BROADCAST SERVICES

3. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 46 U.S.C. 154, 303, 304.

⁷ See 5 U.S.C. § 553(b)(B) (notice requirements inapplicable "when the agency for good cause . . . finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest"). We further find for the same reasons that good cause exists to make the rule changes adopted herein effective upon publication of this Order in the Federal Register. See *id.* at § 553(d)(3).

⁸ See 5 U.S.C. § 553(b)(A).

⁹ See *Third Further Notice of Inquiry and Notice of Proposed Rule Making* in BC Docket No. 81-742, 4 FCC Rcd 6363 (1989) and preceding Notices cited therein.

¹⁰ See *supra* note 7.

4. Section 73.561 is amended by revising the fourth sentence of the introductory text of paragraph (b) as follows:

§ 73.561 Operating schedule; time sharing.

(a) * * *

(b) * * * In order to be considered for this purpose, such an application to share time must be filed no later than the deadline for filing petitions to deny the renewal application of the existing licensee, or, in the case of renewal applications filed by the existing licensee on or before May 1, 1995, no later than the deadline for filing applications in conflict with the such renewal applications.

* * * * *

5. Section 73.1020 is amended by revising paragraph (b) as follows:

§ 73.1020 Station license period.

* * * * *

(b) For the cutoff date for the filing of applications mutually exclusive with renewal applications that are filed on or before May 1, 1995 and for the deadline for filing petitions to deny renewal applications, see § 73.3516(e).

6. Section 73.3516 is amended by revising the introductory text of paragraph (e) and paragraph (e)(1) as follows:

§ 73.3516 Specification of facilities

* * * * *

(e) An application for construction permit for a new broadcast station or for modification of construction permit or license of a previously authorized broadcast station will not be accepted for filing if it is mutually exclusive with an application for renewal of license of an existing broadcast station unless the application for renewal of license is filed on or before May 1, 1995 and unless the mutually exclusive construction permit application is tendered for filing by the end of the first day of the last full calendar month of the expiring license term. A petition to deny an application for renewal of license of an existing broadcast station will be considered as timely filed if it is tendered for filing by the end of the first day of the last full calendar month of the expiring license term. (1) If the license renewal application is not timely filed as prescribed in § 73.3539, the deadline for filing petitions to deny thereto is the 90th day after the FCC gives public notice that it has accepted the late-filed renewal application for filing. In the case of a renewal application filed on or before May 1, 1995, if the license renewal application is not timely filed as prescribed in § 73.3539, the deadline for filing applications mutually exclusive therewith is the 90th day after the FCC gives public notice that it has accepted the late-filed renewal application for filing.

* * * * *

7. Section 73.3523 is amended by revising paragraph (a) as follows:

§ 73.3523 Dismissal of applications in renewal proceedings

(a) An applicant for construction permit, that has filed an application that is mutually exclusive with an application for renewal of a license of an AM, FM or television station (hereinafter competing applicant") filed on or before May 1, 1995, and seeks to dismiss or withdraw its application and thereby remove a conflict between applications pending before the Commission, must obtain the approval of the Commission.

* * * * *

8. Section 73.3584 is amended by revising the third sentence of paragraph (a) as follows: § 73.3584 Procedure for filing petitions to deny.

(a) * * * In the case of applications for renewal of license, Petitions to Deny may be filed at any time up to the deadline established in § 73.3516(e). * * *

* * * * *

9. Section 73.3591 is amended by revising the introductory text of paragraph (a) as follows, revising paragraph (c) as follows, and adding new paragraph (d) as follows.

§ 73.3591 Grants without hearing

(a) Except for renewal applications filed after May 1, 1995 which will be subject to paragraph (d) of this section, in the case of any application for an instrument of authorization, other than a license pursuant to a construction permit, the FCC will make the grant if it finds (on the basis of the application, the pleadings filed or other matters which it may officially notice) that the application presents no substantial and material question of fact and meets the following requirements:

* * * * *

(c) If a petition to deny the application has been filed in accordance with § 73.3584 and the FCC makes the grant in accordance with paragraph (a) of this section, the FCC will deny the petition and issue a concise statement setting forth the reasons for denial and disposing of all substantial issues raised by the petition.

(d) Renewal applications filed after May 1, 1995 will be governed by the criteria established in 47 U.S.C. § 309(k).