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COMMISSION STATES FUTURE POLICY ON INCOMPLETE AND PATENTLY DEFECTIVE AM AND FM CONSTRUCTION PERMIT APPLICATIONS

This Public Notice reflects our continuing effort to expedite application processing. In an ongoing proceeding in General Docket No. 79-137, involving application processing procedures, we have made significant improvements in meeting this objective. In 1981, we revised the Application for Construction Permit for Commercial Broadcast Station (FCC Form 301). The revised Form 301 has resulted in an improvement in application processing through clarification and refinement of the reporting requirements and the elimination of antiquated and unnecessary disclosures. We have recently revised the Application for Construction Permit for Noncommercial Educational Broadcast Stations (FCC Form 340). The revised Form 340 is similar to the revised Form 301. In regard to our experience with the revised Form 301, however, we continue to receive many incomplete and patently defective applications. 1/ This problem is especially acute in the FM service.

The number of construction permit applications returned by the FM Branch is approximately 40% of the tendered applications. Incomplete and patently defective applications place an inordinate burden on our processing staff. This burden entails repeated requests by the staff for information clearly called for in the application. This delays the processing of not only the incomplete and patently defective applications, but also the processing of grantable applications. Most important, service to the public in the initiation of new broadcast service is delayed. In the future, we expect the problem to be aggravated by the increase in the volume of FM applications resulting from BC Docket No. 80-90 and our related action today changing our filing and cut-off procedures.

At the outset, we recognize that returning or dismissing an incomplete or patently defective construction permit application can result in severe consequences to the applicant. At the very least, the applicant could lose its place in the processing line. In many situations, a cut-off date could preclude the refiling of the application. For these reasons, we have not instituted draconian procedures with respect to incomplete or defective

1/ In regard to full service television applications, the administrative burden attendant to incomplete and patently defective applications has not proved to be inordinate. For this reason, we are not including television applications within the ambit of this Public Notice at this time.

applications. However, we do feel that return is warranted where the application is not substantially complete and thus both impairs our ability to evaluate the application and significantly delays processing. In this Public Notice, we are advising applicants as to the types of omissions and defects which will render the application subject to return at the time of tender. We are also advising applicants as to the types of omissions and defects which will result in the return of an application as unacceptable for filing, or outright dismissal.

We have delineated below three stages at which an application can be either returned or dismissed - return at time of tender, return as unacceptable for filing, and dismissal. The first stage involves obvious defects -- significant omissions such as a failure to include required sections. The second stage involves engineering omissions and other defects which would render the application subject to return as unacceptable for filing. Finally, the third stage involves dismissal after the application has been accepted for filing.

Illustrative examples of defects and omissions at each of the three processing stages are set forth below. We emphasize, however, that, while detailed, they are not meant to be all-inclusive. It should also be noted that a failure of the staff to discern an omission or defect at one stage in the process does not preclude appropriate action upon later discovery.

RETURN AT TIME OF TENDER

If the application does not include required sections, the application is patently defective and will be returned at the time of tender. Such an application will not be assigned a file number until resubmitted with all required sections and signed. In these cases we will not allow the applicant to remedy the omission and have its application accepted nunc pro tunc in order to participate in a comparative hearing, if a cut-off date has passed by the time of resubmission.

RETURN AS UNACCEPTABLE FOR FILING

Section 73.3580(h) of the Rules requires local public notice of the filing of certain broadcast applications and amendments. We permit the applicant to certify compliance with this requirement. In the event the applicant fails to certify; or if it did not, in fact, comply with the requirements contained in Section 73.3580, the application is subject to return as unacceptable for filing.

Each application receives a detailed engineering review by the processing staff to determine whether it meets our technical acceptance criteria. Indeed, we believe this to be a core function of the Commission. This review involves determinations with respect to interference to existing facilities, power requirements and minimum spacing requirements. For AM applications, the interference study pertains to daytime hours, nighttime hours and critical hours. In addition, AM applications must comply with certain acceptance criteria. FM applications must comply with distance

separation standards as well as the maximum power and antenna height limitations. If an application does not comply with these requirements and does not contain an appropriate request for waiver, the application will be returned. Similarly, if an FM applicant proposes a directional antenna with a ratio exceeding 15 dB maximum to minimum radiation in the horizontal plane (Section 73.316) and does not include sufficient justification for waiver, the application is subject to return.

There are special concerns applicable to AM broadcasting. Of the three broadcasting services, AM broadcasting is the most complex from an engineering point of view. The accuracy of the coordinates is absolutely essential. Failure to supply coordinates or submitting obviously incorrect coordinates may render the entire engineering section defective. The staff must also be able to determine the antenna efficiency of a nondirectional antenna. Therefore, the height of the antenna, frequency, power and both the length and number of radials in the ground system must be included. If the antenna is top loaded or sectionalized, we must have this information. In regard to a directional antenna, we must have the field ratios, the phases, theoretical RMS and the height of the antenna. Return is appropriate if this requested information is not included.

DISMISSAL

In some situations, an applicant may fail to answer a question or include an Exhibit clearly called for in the application. Many of these instances can be attributed to clerical error or oversight. However, when numerous uncorrected defects and omissions, considered in the totality, impair our ability to evaluate the application, the application will be subject to dismissal. In a similar vein, dismissal is warranted if the application contravenes our multiple ownership rules without sufficient justification for waiver.

RECONSIDERATION NUNC PRO TUNC

Finally, we would also like to note that we have, on many occasions, granted reconsideration of an action dismissing or returning an application as unacceptable for filing when an applicant submits a relatively minor curative amendment within 30 days. In contested proceedings, the result of this procedure is that applications are accepted nunc pro tunc. We will continue to act favorably on such requests after an initial dismissal or return of an application as unacceptable for filing. This procedure is a reasonable accommodation to applicants who wish to participate in the comparative proceeding and may be unfamiliar with our application requirements. In the situations in which we have granted reconsideration in the first instance, the curative amendment has not unduly delayed the processing of other applications. In the future, we will, however, expect such applicants to completely review all portions of a returned or dismissed application. Thereafter, if the same application is returned or dismissed a second time, it will not be afforded nunc pro tunc reconsideration rights. Repeating a procedure whereby applications are re-accepted nunc pro tunc is obviously unfair to other applicants in a comparative proceeding who have prepared properly executed applications. Furthermore, this process of repeatedly

affording nunc pro tunc reconsideration rights leads to delay and tends to encourage the filing of incomplete and poorly prepared applications.

Action by the Commission July 26, 1984. Commissioners Fowler (Chairman), Quello, Dawson, Rivera and Patrick.

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