

APPENDIX 5

RESOLUTION OF 2-2 VOTE

As a general matter requests for Commission action will be denied if the Commission vote is 2-2.¹ Therefore, a 2-2 vote will result in:

- a. denial of staff recommendations, except as noted below;
- b. denial of full power operating licenses;
- c. referral of export license applications to the President;
- d. denial of motions in adjudicatory proceedings;
- e. denial of motions for reconsideration challenging Commission adjudicatory orders or other Commission statements having a legal effect;
- f. denial of review of Licensing Board decisions and Director's Decisions under 2.206, even if staff recommends "review";
- g. denial of requests to close Commission meetings or to hold meetings on short notice; and
- h. denial of requests by members of the public to speak at Commission meetings.

Exceptions to this rule include:

- a. The Commission may alter policy decisions which have not been set forth in an adjudicatory order or policy statement. For example, if the Commission previously took the position that the Commission's export licensing responsibilities should be given to the Executive Branch, a 2-2 vote on this would result in a change of that policy to one of the Commission having no position on the matter. This permits the Commission to provide current views on policy matters before Congressional committees, etc.;
- b. If staff has been delegated authority to act by the Commission, but as a matter of discretion, seeks Commissioner views before taking action (e.g., an enforcement

¹ Reference OGC Memorandum of May 25, 1988.

action), the staff may take its proposed course of action;

- c. Commissioner requests for extension of time to respond to staff papers will be granted because under the Commission's procedures such requests are granted unless a majority objects;
- d. Sunshine Act transcripts will be released because a majority of the full Commission must support invocation of an exemption;
- e. Grant of FOIA appeals because a majority must support invoking an exemption.

In some cases rather than taking action on a matter that resulted in a 2-2 vote, the Commission may choose to defer a decision until a fifth Commissioner has been appointed.