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will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(e) Parties may petition the Commission for a declaratory ruling under §1.2 of this chapter, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission must comply with the procedures in paragraphs (f) and (h) of this section and will be put on public notice. Any responsive pleadings in a Commission proceeding must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies in a Commission proceeding must be served on all parties and filed within 15 days thereafter.

(f) Copies of petitions for declaratory rulings and waivers must be served on interested parties, including parties against whom the petitioner seeks to enforce the restriction or parties whose restrictions the petitioner seeks to prohibit. A certificate of service stating on whom the petition was served must be filed with the petition. In addition, in a Commission proceeding brought by an association or a local government, constructive notice of the proceeding must be given to members of the association or to the citizens under the local government's jurisdiction. In a court proceeding brought by an association, an association must give constructive notice of the proceeding to its members. Where constructive notice is required, the petitioner or plaintiff must file with the Commission or the court overseeing the proceeding a copy of the constructive notice with a statement explaining where the notice was placed and why such placement was reasonable.

(g) In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance, or use of devices used for over-the-air reception of video programming services or devices used to receive or transmit fixed wireless signals shall be on the party that seeks to impose or maintain the restriction.

(h) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies of the petitions and related pleadings will be available for public inspection in the Reference Information Center, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies will be available for purchase from the Commission's contract copy center, and the Commission decisions will be available on the Internet.

[66 FR 2333, Jan. 11, 2001, as amended at 67 FR 13224, Mar. 21, 2002]

Subpart T—Exempt Telecommunications Companies

§ 1.5000 Purpose.

The purpose of part 1, subpart T, is to implement Section 34(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. §79 et seq., as added by Section 103 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996).

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

§ 1.5001 Definitions.

(a) For the purpose of this part, the terms *telecommunications services* and *information services* shall have the same meanings as provided in the Communications Act of 1934, as amended;

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(b) Commission shall be defined as the Federal Communications Commission; and

(c) *ETC* shall be defined as an exempt telecommunications company.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

§ 1.5002 Contents of application and procedure for filing.

(a) A person seeking status as an exempt telecommunications company (applicant) must file with the Commission with respect to the company or companies which are eligible companies owned or operated by the applicant, and serve on the Securities and Exchange Commission and any affected State commission, the following:

(1) A brief description of the planned activities of the company or companies which are or will be eligible companies owned and/or operated by the applicant;

(2) A sworn statement, by a representative legally authorized to bind the applicant, attesting to any facts or representations presented to demonstrate eligibility for ETC status, including a representation that the applicant is engaged directly, or indirectly, wherever located, through one or more affiliates (as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935), and exclusively in the business of providing:

- (i) Telecommunications services;
- (ii) Information services;
- (iii) Other services or products subject to the jurisdiction of the Commission; or
- (iv) Products or services that are related or incidental to the provision of a product or service described in paragraph (a)(1)(i), (a)(1)(ii), or (a)(1)(iii); and

(3) A sworn statement, by a representative legally authorized to bind the applicant, certifying that the applicant satisfies part 1, subpart P, of the Commission's regulations, 47 CFR 1.2001 through 1.2003, regarding implementation of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

§ 1.5003 Effect of filing.

A person applying in good faith for a Commission determination of exempt telecommunications company status will be deemed to be an exempt telecommunications company from the date of receipt of the application until the date of Commission action pursuant to § 1.5004.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

§ 1.5004 Commission action.

If the Commission has not issued an order granting or denying an application within 60 days of receipt of the application, the application will be deemed to have been granted as a matter of law.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

§ 1.5005 Notification of Commission action to the Securities and Exchange Commission.

The Secretary of the Commission will notify the Securities and Exchange Commission whenever a person is determined to be an exempt telecommunications company.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]

§ 1.5006 Procedure for notifying Commission of material change in facts.

If there is any material change in facts that may affect an ETC's eligibility for ETC status under Section 34(a)(1) of the Public Utility Holding Company Act of 1935, the ETC must, within 30 days of the change in fact, either:

- (a) Apply to the Commission for a new determination of ETC status;
- (b) File a written explanation with the Commission of why the material change in facts does not affect the ETC's status; or
- (c) Notify the Commission that it no longer seeks to maintain ETC status.

[61 FR 52899, Oct. 9, 1996; 61 FR 57335, Nov. 6, 1996]