

§ 1.1418

(2) Each utility is required to exercise good faith in establishing and updating its presumptive average number of attachers.

(3) The presumptive average number of attachers may be challenged by an attaching entity by submitting information demonstrating why the utility's presumptive average is incorrect. The attaching entity should also submit what it believes should be the presumptive average and the methodology used. Where a complete inspection is impractical, a statistically sound survey may be submitted.

(4) Upon successful challenge of the existing presumptive average number of attachers, the resulting data determined shall be used by the utility as the presumptive number of attachers within the rate formula.

[63 FR 12026, Mar. 12, 1998, as amended at 66 FR 34581, June 29, 2001]

EFFECTIVE DATE NOTE: At 63 FR 12026, Mar. 12, 1998, § 1.1417 was added. The section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1.1418 Use of presumptions in calculating the space factor.

With respect to the formulas referenced in § 1.1409(e)(1) and § 1.1409(e)(2), the space occupied by an attachment is presumed to be one (1) foot. The amount of usable space is presumed to be 13.5 feet. The amount of unusable space is presumed to be 24 feet. The pole height is presumed to be 37.5 feet. These presumptions may be rebutted by either party.

[66 FR 34581, June 29, 2001]

Subpart K—Implementation of the Equal Access to Justice Act (EAJA) in Agency Proceedings

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 3786, Jan. 27, 1982, unless otherwise noted.

47 CFR Ch. I (10–1–10 Edition)

GENERAL PROVISIONS

§ 1.1501 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called *the EAJA* in this subpart), provides for the award of attorney's fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called *adversary adjudications*) before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust, or when the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39898, July 31, 1996]

§ 1.1502 When the EAJA applies.

The EAJA applies to any adversary adjudication pending or commenced before the Commission on or after August 5, 1985. The provisions of § 1.1505(b) apply to any adversary adjudications commenced on or after March 29, 1996.

[61 FR 39898, July 31, 1996]

§ 1.1503 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Any proceeding in which this Agency may fix a lawful present or future rate is not covered by the EAJA. Proceedings to grant or renew licenses

Federal Communications Commission

§ 1.1505

are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise “adversary adjudications”.

(b) The Commission may designate a proceeding as an adversary adjudication for purposes of the EAJA by so stating in an order initiating the proceeding or designating the matter for hearing. The Commission’s failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the EAJA and matters specifically excluded from coverage, any awards made will include only fees and expenses related to covered issues.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987]

§ 1.1504 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the EAJA, the applicant must be a party, as defined in 5 U.S.C. 551(3), to the adversary adjudication for which it seeks an award. The applicant must show that it meets all conditions of eligibility set out in this paragraph and in paragraph (b) of this section.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable association as defined in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than \$7 million and not more than 500 employees;

(6) For purposes of § 1.1505(b), a small entity as defined in 5 U.S.C. 601.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an “individual” rather than a “sole owner of an unincorporated business” if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The number of employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant’s direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the Administrative Law Judge determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the Administrative Law Judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39898, July 31, 1996]

§ 1.1505 Standards for awards.

(a) A prevailing party may receive an award for fees and expenses incurred in connection either with an adversary adjudication, or with a significant and discrete substantive portion of an adversary adjudication in which the