

§ 1.939

47 CFR Ch. I (10–1–11 Edition)

§ 1.939 Petitions to deny.

(a) *Who may file.* Any party in interest may file with the Commission a petition to deny any application listed in a Public Notice as accepted for filing, whether as filed originally or upon major amendment as defined in § 1.929 of this part.

(1) For auctionable license applications, petitions to deny and related pleadings are governed by the procedures set forth in § 1.2108 of this part.

(2) Petitions to deny for non-auctionable applications that are subject to petitions under § 309(d) of the Communications Act must comply with the provisions of this section and must be filed no later than 30 days after the date of the Public Notice listing the application or major amendment to the application as accepted for filing.

(b) *Filing of petitions.* Petitions to deny and related pleadings may be filed electronically via ULS. Manually filed petitions to deny must be filed with the Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. Attachments to manually filed applications may be filed on a standard 3¼" magnetic diskette formatted to be readable by high density floppy drives operating under MS-DOS (version 3.X or later compatible versions). Each diskette submitted must contain an ASCII text file listing each filename and a brief description of the contents of each file on the diskette. The files on the diskette, other than the table of contents, should be in Adobe Acrobat Portable Document Format (PDF) whenever possible. Petitions to deny and related pleadings must reference the file number of the pending application that is the subject of the petition.

(c) *Service.* A petitioner shall serve a copy of its petition to deny on the applicant and on all other interested parties pursuant to § 1.47. Oppositions and replies shall be served on the petitioner and all other interested parties.

(d) *Content.* A petition to deny must contain specific allegations of fact sufficient to make a *prima facie* showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity. Such allegations of fact, except for

those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof.

(e) *Petitions to deny amended applications.* Petitions to deny a major amendment to an application may raise only matters directly related to the major amendment that could not have been raised in connection with the application as originally filed. This paragraph does not apply to petitioners who gain standing because of the major amendment.

(f) *Oppositions and replies.* The applicant and any other interested party may file an opposition to any petition to deny and the petitioner may file a reply thereto in which allegations of fact or denials thereof, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof. Time for filing of oppositions and replies is governed by § 1.45 of this part for non-auctionable services and § 1.2108 of this part for auctionable services.

(g) *Dismissal of petition.* The Commission may dismiss any petition to deny that does not comply with the requirements of this section if the issues raised become moot, or if the petitioner or his/her attorney fails to appear at a settlement conference pursuant to § 1.956 of this part. The reasons for the dismissal will be stated in the dismissal letter or order. When a petition to deny is dismissed, any related responsive pleadings are also dismissed.

(h) *Grant of petitioned application.* If a petition to deny has been filed and the Commission grants the application, the Commission will dismiss or deny the petition by issuing a concise statement of the reason(s) for dismissing or denying the petition, disposing of all substantive issues raised in the petition.

[63 FR 68931, Dec. 14, 1998, as amended at 64 FR 53240, Oct. 1, 1999; 70 FR 61058, Oct. 20, 2005; 71 FR 15619, Mar. 29, 2006; 74 FR 68544, Dec. 28, 2009]

§ 1.945 License grants.

(a) *License grants—auctionable license applications.* Procedures for grant of licenses that are subject to competitive

bidding under section 309(j) of the Communications Act are set forth in §§ 1.2108 and 1.2109 of this part.

(b) *License grants—non-auctionable license applications.* No application that is not subject to competitive bidding under § 309(j) of the Communications Act will be granted by the Commission prior to the 31st day following the issuance of a Public Notice of the acceptance for filing of such application or of any substantial amendment thereof, unless the application is not subject to § 309(b) of the Communications Act.

(c) *Grant without hearing.* In the case of both auctionable license applications and non-mutually exclusive non-auctionable license applications, the Commission will grant the application without a hearing if it is proper upon its face and if the Commission finds from an examination of such application and supporting data, any pleading filed, or other matters which it may officially notice, that:

(1) There are no substantial and material questions of fact;

(2) The applicant is legally, technically, financially, and otherwise qualified;

(3) A grant of the application would not involve modification, revocation, or non-renewal of any other existing license;

(4) A grant of the application would not preclude the grant of any mutually exclusive application; and

(5) A grant of the application would serve the public interest, convenience, and necessity.

(d) *Grant of petitioned applications.* The FCC may grant, without a formal hearing, an application against which petition(s) to deny have been filed. If any petition(s) to deny are pending (i.e. have not been dismissed or withdrawn by the petitioner) when an application is granted, the FCC will deny the petition(s) and issue a concise statement of the reason(s) for the denial, disposing of all substantive issues raised in the petitions.

(e) *Partial and conditional grants.* The FCC may grant applications in part, and/or subject to conditions other than those normally applied to authorizations of the same type. When the FCC does this, it will inform the applicant

of the reasons therefor. Such partial or conditional grants are final unless the FCC revises its action in response to a petition for reconsideration. Such petitions for reconsideration must be filed by the applicant within thirty days after the date of the letter or order stating the reasons for the partial or conditional grant, and must reject the partial or conditional grant and return the instrument of authorization.

(f) *Designation for hearing.* If the Commission is unable to make the findings prescribed in subparagraph (c), it will formally designate the application for hearing on the grounds or reasons then obtaining and will notify the applicant and all other known parties in interest of such action.

(1) Orders designating applications for hearing will specify with particularity the matters in issue.

(2) Parties in interest, if any, who are not notified by the Commission of its action in designating a particular application for hearing may acquire the status of a party to the proceeding by filing a petition for intervention showing the basis of their interest not more than 30 days after publication in the FEDERAL REGISTER of the hearing issues or any substantial amendment thereto.

(3) The applicant and all other parties in interest shall be permitted to participate in any hearing subsequently held upon such applications. Hearings may be conducted by the Commission or by the Chief of the Wireless Telecommunications Bureau, or, in the case of a question which requires oral testimony for its resolution, an Administrative Law Judge. The burden of proceeding with the introduction of evidence and burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission or the Chief of the Wireless Telecommunications Bureau.

[63 FR 68932, Dec. 14, 1998]

§ 1.946 Construction and coverage requirements.

(a) *Construction and commencement of service requirements.* For each of the Wireless Radio Services, requirements