

granted only if the licensee shows that the failure to commence service is due to causes beyond its control. No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment. If the licensee orders equipment within 90 days of the license grant, a presumption of due diligence is created.

(h) An application for modification of an authorization (under construction) at the existing location does not extend the initial construction period. If additional time to commence service is required, a request for such additional time must be submitted on FCC Form 601, either separately or in conjunction with the submission of the FCC Form 601 requesting modification.

(i) DSRCS Roadside Units (RSUs) in the 5850–5925 MHz band must be placed in operation within 12 months from the date of registration (*see* § 90.375) or the authority to operate the RSUs cancels automatically (*see* § 1.955 of this chapter). Such registration date(s) do not change the overall renewal period of the single license. Licensees must notify the Commission in accordance with § 1.946 of this chapter when registered units are placed in operation within their construction period.

[65 FR 60875, Oct. 13, 2000, as amended at 68 FR 38639, June 30, 2003; 69 FR 46443, Aug. 3, 2004; 69 FR 75172, Dec. 15, 2004; 71 FR 52749, Sept. 7, 2006; 72 FR 48859, Aug. 24, 2007]

#### § 90.157 Discontinuance of station operation.

(a) An authorization shall cancel automatically upon permanent discontinuance of operations. Unless stated otherwise in this part or in a station authorization, for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.

(b) For DSRCS Roadside Units (RSUs) in the 5850–5925 MHz band, it is the DSRCS licensee's responsibility to delete from the registration database any RSUs that have been discontinued.

[72 FR 44423, Aug. 8, 2007]

#### § 90.159 Temporary and conditional permits.

(a) An applicant for a license under this part (other than a commercial mobile radio license) utilizing an already licensed facility may operate the radio station(s) for a period of up to one hundred eighty (180) days after submitting a Form 601 application for a station license in accordance with § 90.127 of this part, provided that all the antennas employed by control stations are 6.1 meters (20 feet) or less above ground or 6.1 meters (20 feet) or less above a man-made structure other than an antenna tower to which it is affixed. When required by § 90.175 of this part, applications must be accompanied by evidence of frequency coordination. The temporary operation of stations, other than mobile stations within the Canadian coordination zone is limited to stations with a maximum of 5 watts effective radiated power and a maximum antenna height of 6.1 meters (20 ft) above average terrain.

(b) An applicant proposing to operate a new land mobile radio station or modify an existing station below 470 MHz or in the one-way paging 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) that is required to submit a frequency recommendation pursuant to paragraphs (b) through (h) of § 90.175 of this part may operate the proposed station during the pendency of its application for a period of up to one hundred eighty (180) days upon the filing of a properly completed formal Form 601 application that complies with § 90.127 of this part if the application is accompanied by evidence of frequency coordination in accordance with § 90.175 of this part and provided that the following conditions are satisfied:

(1) For applicants proposing to operate below 470 MHz, that the proposed station location is south of Line A or west of Line C as defined in § 90.7; for applicants in the one-way paging 929–930 MHz band, that the proposed station location is west of Line C as defined in § 90.7.

(2) The proposed antenna structure has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation

safety as required by § 17.4 of the Commission's Rules; or the proposed antenna or tower structure does not exceed 6.1 meters (20 feet) above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied by the Federal Aviation Administration and cleared by the FCC.

(3) The grant of the application does not require a waiver of the Commission's Rules.

(4) The applicant has determined that the proposed facility will not significantly affect the environment as defined in § 1.1307.

(5) The applicant has determined that the proposed station affords the level of protection to radio quiet zones and radio receiving facilities as specified in § 1.924 of this chapter.

(6) The applicant has submitted an application to the Commission stating the frequency the applicant intends to use and that the frequency coordination requirements specified in § 90.175 for selection and use of this frequency have been met and a minimum of ten business days has passed between submission of the application to the Commission and the onset of operation.

(c) An applicant proposing to operate an itinerant station or an applicant seeking the assignment of authorization or transfer of control of a license for an existing station below 470 MHz or in the 929–930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) may operate the proposed station during the pendency of the application for a period not to exceed one hundred eighty (180) days upon the filing of a properly completed formal Form 601 application that complies with § 90.127 of this part. Conditional authority ceases immediately if the application is dismissed by the Commission. All other categories of applications listed in § 90.175(i) of this part that do not require evidence of frequency coordination are excluded from the provisions of this section.

(d) Conditional authorization does not prejudice any action the Commission may take on the subject application. Conditional authority is accepted with the express understanding that

such authority may be modified or canceled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. Consistent with § 90.175(g) of this part, the applicant assumes all risks associated with operation under conditional authority, the termination or modification of conditional authority, or the subsequent dismissal or denial of its application. Authority reverts back to the original licensee if an assignee or transferee's conditional authority is canceled.

(e) The transmissions of new stations operating pursuant to conditional authority shall be identified by a temporary call sign consisting of the prefix "WT" followed by the applicant's local seven digit business telephone number as provided in § 2.302. Transmissions by applicants for the modification, assignment of authorization or transfer of control of an existing station shall be identified by the station's call sign.

[51 FR 14997, Apr. 22, 1986, as amended at 54 FR 50239, Dec. 5, 1989; 58 FR 44956, Aug. 25, 1993; 58 FR 62291, Nov. 26, 1993; 59 FR 59959, Nov. 21, 1994; 62 FR 18924, Apr. 17, 1997; 63 FR 68964, Dec. 14, 1998; 69 FR 17959, Apr. 6, 2004]

#### SPECIAL RULES GOVERNING FACILITIES USED TO PROVIDE COMMERCIAL MOBILE RADIO SERVICES

SOURCE: 59 FR 59959, Nov. 21, 1994; 63 FR 68964, Dec. 14, 1998, unless otherwise noted.

NOTE: The following rules (§§ 90.165 through 90.169) govern applications, licensing, and operation of radio facilities in the 220–222 MHz (subpart T), Business Radio (subpart D), 929–930 MHz Paging (subpart P), and Specialized Mobile Radio (subpart S) services that are used to provide commercial mobile radio services (see §§ 20.3 and 20.9 of this chapter). Compliance with the rules relating to applications and licensing of facilities on paging-only channels in the Business Radio Service (see § 90.75(c)(10)) and 929–930 MHz paging channels (see § 90.494(a),(b)) is not required prior to August 10, 1996. Compliance with § 90.168 is also not required prior to August 10, 1996 for reclassified commercial mobile radio service providers who are to be regulated as private carriers until August 10, 1996 as provided in the Second Report and Order in GN Docket No. 93–252, 9 FCC Rcd 2348 (1994), paras. 280–284. The licensing and operation of radio facilities in the 220–222 MHz (subpart T), Business Radio (subpart D), 929–930 MHz Paging (subpart P), and Specialized Mobile Radio (subpart S) services that are

used to provide commercial mobile radio services are also subject to rules elsewhere in this part that apply generally to Private Land Mobile Radio Services. In the case of any conflict between rules set forth in §§ 90.165 through 90.169 and other rules in this part, §§ 90.165 through 90.169 apply. 14–23. New §§ 90.165 through 90.169 are added to subpart G to read as follows:

**§ 90.165 Procedures for mutually exclusive applications.**

Mutually exclusive commercial mobile radio service applications are processed in accordance with part 1 of this chapter and with the rules in this section, except for mutually exclusive applications for licenses in the 220–222 MHz service and the 929–930 MHz Paging service, which are processed in accordance with the rules in subpart P and subpart T of this part.

Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under Commission rules governing the services involved.

(a) *Separate applications.* Any applicant that files an application knowing that it will be mutually exclusive with one or more applications should not include in the mutually exclusive application a request for other channels or facilities that would not, by themselves, render the application mutually exclusive with those other applications. Instead, the request for such other channels or facilities should be filed in a separate application.

(b) *Filing groups.* Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent consideration. The Commission may dismiss as defective (pursuant to § 1.934 of this chapter) any mutually exclusive application(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (c)(3) of this section. A filing group is one of the following types:

(1) *Renewal filing group.* A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications (see section 1.949 of this chapter).

(2) *Same-day filing group.* A same-day filing group comprises all mutually exclusive applications whose filing date is the same day, which is normally the filing date of the first-filed application(s).

(3) *Thirty-day notice and cut-off filing group.* A 30-day notice and cut-off filing group comprises mutually exclusive applications whose filing date is no later than thirty (30) days after the date of the Public Notice listing the first-filed application(s) (according to the filing dates) as acceptable for filing.

(4) *Window filing group.* A window filing group comprises mutually exclusive applications whose filing date is within an announced filing window. An announced filing window is a period of time between and including two specific dates, which are the first and last dates on which applications (or amendments) for a particular purpose may be accepted for filing. In the case of a one-day filing window, the two dates are the same. The dates are made known to the public in advance.

(c) *Procedures.* Generally, the Commission may grant one application in a filing group of mutually exclusive applications and dismiss the other application(s) in the filing group that are excluded by the grant, pursuant to § 1.935 of this chapter.

(1) *Selection methods.* In selecting the application to grant, the Commission may use competitive bidding, random selection, or comparative hearings, depending on the type of applications involved.

(2) *Dismissal of applications.* The Commission may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 1.934 of this chapter, either before or after employing selection procedures.

(3) *Type of filing group used.* Except as otherwise provided in this part, the type of filing group used in processing of two or more mutually exclusive applications depends on the purpose(s) of the applications.

(i) If one of the mutually exclusive applications is a timely-filed application for renewal of an authorization, a renewal filing group is used.

(ii) If any mutually exclusive application filed on the earliest filing date