

## Federal Communications Commission

## § 101.55

other matters as may be officially noticed, there are no substantial and material questions of fact, presented (Other than those relating to the comparative merits of the applications) which would preclude a grant under §1.915 of this chapter.

(b) Provided that the conditions of paragraph (a) of this section are satisfied, applicants may request the Commission to act upon their mutually exclusive applications without a formal hearing pursuant to the summary procedure outlined below:

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing:

(i) A waiver of the applicant's right to a formal hearing;

(ii) A request and agreement that, in order to avoid the delay and expense of a comparative formal hearing, the Commission should exercise its judgment to select from among the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and

(iii) The signature of a principal (and the principal's attorney if represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning the applicant's proposal relative to the comparative criteria.

(3) Within thirty (30) days following the due date for filing this information, the Commission will accept concise and factual argument on the competing proposals from the rival applicants, potential customers, and other knowledgeable parties in interest.

(4) Within fifteen (15) days following the due date for the filing of comments, the Commission will accept concise and factual replies from the rival applicants.

(5) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants will have the right to be represented.

(6) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the Commission will issue a decision granting one (or more) of the proposals which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). This decision will be considered final.

[61 FR 26677, May 28, 1996, as amended at 63 FR 6104, Feb. 6, 1998; 63 FR 68982, Dec. 14, 1998]

### LICENSE TRANSFERS, MODIFICATIONS, CONDITIONS AND FORFEITURES

#### § 101.55 Considerations involving transfer or assignment applications.

(a) Except as provided for in paragraph (d) of this section, licenses not authorized pursuant to competitive bidding procedures may not be assigned or transferred prior to the completion of construction of the facility.

(b) [Reserved]

(c) At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the acquisition of the license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(d) If a proposed transfer of radio facilities is incidental to a sale or other facilities or merger of interests, the showing specified under paragraph (c) of this section shall be submitted and include an additional exhibit that:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

[61 FR 26677, May 28, 1996, as amended at 63 FR 6104, Feb. 6, 1998; 63 FR 68982, Dec. 14, 1998; 65 FR 38327, June 20, 2000; 68 FR 4955, Jan. 31, 2003]

**§ 101.56 Partitioned service areas (PSAs) and disaggregated spectrum.**

(a)(1) The holder of an EA authorization to provide service pursuant to the competitive bidding process and any incumbent licensee of rectangular service areas in the 38.6–40.0 GHz band may enter into agreements with eligible parties to partition any portion of its service area as defined by the partitioner and partitionee. Alternatively, licensees may enter into agreements or contracts to disaggregate any portion of spectrum, provided acquired spectrum is disaggregated according to frequency pairs.

(2)(i) Contracts must be filed with the Commission within 30 days of the date that such agreements are reached.

(ii) The contracts must include descriptions of the areas being partitioned or spectrum disaggregated. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC recognized service area is utilized (i.e., Metropolitan Service Area or Rural Service Area) or county lines are followed. If geographic coordinate points are used, they must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(b) The eligibility requirements applicable to EA authorization holders also apply to those individuals and entities seeking partitioned or disaggregated spectrum authorizations.

(c) Subsequent to issuance of the authorization for a partitioned service area, the partitioned area will be treated as a separate protected service area.

(d)(1) When any area within an EA becomes a partitioned service area, the remaining counties and geopolitical subdivision within that EA will be subsequently treated and classified as a partitioned service area.

(2) At the time an EA is partitioned, the Commission shall cancel the EA authorization initially issued and issue a partitioned service area authorization to the former EA authorization holder.

(e) At the time a BTA is partitioned, the Commission shall cancel the BTA authorization initially issued and issue a partitioned service area authorization to the former BTA authorization holder.

(f) The duties and responsibilities imposed upon EA authorization holders in this part, apply to those licensees obtaining authorizations by partitioning or spectrum disaggregation.

(g) The build-out requirements for the partitioned service area or disaggregated spectrum shall be the same as applied to the EA authorization holder.

(h) The license term for the partitioned service area or disaggregated spectrum shall be the remainder of the period that would apply to the EA authorization holder.

(i) Licensees, including those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum.

[63 FR 6104, Feb. 6, 1998, as amended at 63 FR 68982, Dec. 14, 1998; 64 FR 45893, Aug. 23, 1999; 64 FR 59664, Nov. 3, 1999; 67 FR 45379, July 9, 2002]

EDITORIAL NOTE: At 64 FR 59664, Nov. 3, 1999, in §101.56, paragraphs (d)(1) and (2) were redesignated as (d) and (e); however, paragraph (e) already exists and the change could not be made.

**§ 101.61 Certain modifications not requiring prior authorization in the Local Multipoint Distribution Service and 24 GHz Service**

In the Local Multipoint Distribution Service (LMDS) licensees may add, remove, or relocate facilities within the