

Federal Communications Commission

§ 73.3591

knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) A petition shall be deemed to be pending before the Commission from the time a petition is filed with the Commission until an order of the Commission granting or denying the petition is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a petitioner in preparing, filing, and prosecuting its petition for which reimbursement is being sought.

(4) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

[54 FR 22598, May 25, 1989. Redesignated and amended at 55 FR 28914, July 16, 1990]

§ 73.3589 Threats to file petitions to deny or informal objections.

(a) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny or an informal objection. For the purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector incurred reasonably and directly in preparing to file a petition to deny will not be considered to be payment for refraining from filing a petition to deny or informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement nonfinancial promises are prohibited unless specifically approved by the Commission.

(b) Whenever any payment is made in exchange for withdrawing a threat to file or refraining from filing a petition to deny or informal objection, the licensee must file with the Commission a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

(1) Certification that neither the would-be petitioner, nor any person or organization related to the would-be

petitioner, has received or will receive any money or other consideration in connection with the citizens' agreement other than legitimate and prudent expenses reasonably incurred in preparing to file the petition to deny;

(2) Certification that unless such arrangement has been specifically approved by the Commission, neither the would-be petitioner, nor any person or organization related to the would-be petitioner, is or will be involved in carrying out, for a fee, any programming ascertainment, employment or other nonfinancial initiative referred to in the citizens' agreement; and

(3) The terms of any oral agreement.

(c) For purposes of this section:

(1) Affidavits filed pursuant to this section shall be executed by the licensee, if an individual; a partner having personal knowledge of the facts, if a partnership; or an officer having personal knowledge of the facts, if a corporation or association.

(2) "Legitimate and prudent expenses" are those expenses reasonably incurred by a would-be petitioner in preparing to file its petition for which reimbursement is being sought.

(3) "Other consideration" consists of financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

[55 FR 28914, July 16, 1990]

§ 73.3591 Grants without hearing.

(a) Except for renewal applications filed after May 1, 1995 which will be subject to paragraph (d) of this section, in the case of any application for an instrument of authorization, other than a license pursuant to a construction permit, the FCC will make the grant if it finds (on the basis of the application, the pleadings filed or other matters which it may officially notice) that the application presents no substantial and material question of fact and meets the following requirements:

(1) There is not pending a mutually exclusive application filed in accordance with paragraph (b) of this section;

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

(3) The applicant is not in violation of provisions of law, the FCC rules, or established policies of the FCC; and

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

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the FCC will not consider any other application, or any application if amended so as to require a new file number, as being mutually exclusive or in conflict with the application under consideration unless such other application was substantially complete, and tendered for filing by:

(1) The close of business on the day preceding the day designated by Public Notice as the day the listed application is to be available and ready for processing;

(2) The date prescribed in § 73.3516(e) in the case of applications which are mutually exclusive with applications for renewal of license of broadcast stations; or

(3) The close of business on the day designated by the FCC pursuant to § 73.3564(d) as the date(s) for filing low power TV or TV translator applications.

(c) If a petition to deny the application has been filed in accordance with § 73.3584 and the FCC makes the grant in accordance with paragraph (a) of this section, the FCC will deny the petition and issue a concise statement setting forth the reasons for denial and disposing of all substantial issues raised by the petition.

(d) Renewal applications filed after May 1, 1995 will be governed by the criteria established in 47 U.S.C. § 309(k).

[44 FR 38507, July 2, 1979, as amended at 50 FR 47844, Dec. 7, 1984; 59 FR 31557, June 20, 1994; 61 FR 18291, Apr. 25, 1996]

§ 73.3592 Conditional grant.

(a) Where a grant of an application would preclude the grant of any application or applications mutually exclusive with it, the FCC may, if the public interest will be served thereby, make a conditional grant of one of the applications and designate all of the mutually exclusive applications for hearing. Such conditional grant will be made upon the express condition that such grant is subject to being withdrawn if,

at the hearing, it is shown that public interest will be better served by a grant of one of the other applications. Such conditional grants will be issued only where it appears:

(1) That some or all of the applications were not filed in good faith but were filed for the purpose of delaying or hindering the grant of another application; or

(2) That public interest requires the prompt establishment of broadcast service in a particular community or area; or

(3) That a grant of one or more applications would be in the public interest, and that a delay in making a grant to any applicant until after the conclusion of a hearing on all applications might jeopardize the rights of the United States under the provisions of international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest, and that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or the provisions of the FCC rules.

(b) When two or more applications for the same AM, FM or TV assignment have been designated for hearing, the FCC may, if the public interest will be served thereby, make a conditional grant to a group composed of any two or more of the competing applicants, such grant to terminate when the successful applicant commences operation under the terms of a regular authorization. No conditional grant will be made unless all of the competing applicants have been afforded a reasonable opportunity to participate in the group seeking the conditional grant. In its application, the group shall include a special showing as to the need for the service pending operation by the successful applicant under the terms of a regular authorization; the effect, if any, of a grant on the position of any applicant which is not a member of the group; and any other factors which are deemed pertinent to the public interest judgment.

[44 FR 38507, July 2, 1979]