

for withdrawing or dismissing the application; and

(2) The terms of any oral agreement relating to the withdrawal or dismissal of the application.

(c) For the purposes of this section:

(1) Affidavits filed pursuant to this section must be executed by the filing party, 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) Applications are deemed to be pending before the FCC from the time the application is filed with the FCC until such time as an order of the FCC granting, denying or dismissing the application is no longer subject to reconsideration by the FCC or to review by any court.

(3) “Legitimate and prudent expenses” are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application for which reimbursement is 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.

[59 FR 59507, Nov. 17, 1994, as amended at 63 FR 68951, Dec. 14, 1998]

**§ 22.939 Site availability requirements for applications competing with cellular renewal applications.**

In addition to the other requirements set forth in this part for initial cellular applications, any application competing against a cellular renewal application must contain, when initially filed, appropriate documentation demonstrating that its proposed antenna site(s) will be available. Competing applications that do not include such documentation will be dismissed. If the competing applicant does not own a particular site, it must, at a minimum demonstrate that the site is available to it by providing a letter from the owner of the proposed antenna site expressing the owner’s intent to sell or lease the proposed site to the applicant. If any proposed antenna site is under U.S. Government control, the ap-

plicant must submit written confirmation of the site’s availability from the appropriate Government agency. Applicants which file competing applications against incumbent cellular licensees may not rely on the assumption that an incumbent licensee’s antenna sites are available for their use.

**§ 22.940 Criteria for comparative cellular renewal proceedings.**

This section sets forth criteria to be used in comparative cellular renewal proceedings. The ultimate issue in comparative renewal proceedings will be to determine, in light of the evidence adduced in the proceeding, what disposition of the applications would best serve the public interest, convenience and necessity.

(a) *Renewal expectancies.* The most important comparative factor to be considered in a comparative cellular renewal proceeding is a major preference, commonly referred to as a “renewal expectancy.”

(1) The cellular renewal applicant involved in a comparative renewal proceeding will receive a renewal expectancy, if its past record for the relevant license period demonstrates that:

(i) The renewal applicant has provided “substantial” service during its past license term. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal; and

(ii) The renewal applicant has substantially complied with applicable FCC rules, policies and the Communications Act of 1934, as amended.

(2) In order to establish its right to a renewal expectancy, a cellular renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(i) A description of its current service in terms of geographic coverage and population served, as well as the system’s ability to accommodate the needs of roamers;

(ii) An explanation of its record of expansion, including a timetable of the construction of new cell sites to meet changes in demand for cellular service;