



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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FCC 94-41

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FCC FREEZES COMPARATIVE PROCEEDINGS

The FCC is holding in abeyance the processing of applications and the adjudication of hearing proceedings involving mutually exclusive proposals for new broadcast facilities in light of the opinion of the United States Court of Appeals for the District of Columbia in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). This ruling held that the integration of ownership into management, one of the principal criteria used in evaluating applicants for new broadcast facilities, is arbitrary and capricious and therefore unlawful.

The court's action reversed and remanded the Commission's memorandum opinion and order in Anchor Broadcasting Limited Partnership, 7 FCC Rcd 4566 (1992), modified, 8 FCC Rcd 1674 (1993), in which the Commission awarded a construction permit for a new FM radio station in Selbyville, Delaware. The court accepted the arguments of applicant, Susan M. Bechtel, that the Commission's policy of granting comparative credit to applicants proposing that their owners will participate in the day-to-day management of the station was unlawful. Accordingly, the court ordered that the Commission consider Ms. Bechtel's application and any other application properly before it, under standards free of the integration policy.

Because integration has been a crucial factor in many recent comparative proceedings, the Commission has decided to stay such pending cases while it considers appropriate action responsive to the court's opinion. The Commission will also consider taking further action in a rulemaking initiated in 1992 to reexamine the comparative process. Reexamination of the Policy Statement on Comparative Broadcast Hearings, 7 FCC Rcd 2664 (1992); 8 FCC Rcd 5475 (1993).

During the freeze, predesignation procedures and hearing proceedings (except those aspects of hearing proceedings not involving comparative analysis of new applicants' proposals) will

be suspended. The freeze will apply both to new applicant proceedings and comparative renewal proceedings.

Further, during the freeze, the Mass Media Bureau will not issue cutoff lists or adopt FM filing windows for new filing opportunities or require the filing of amendments, integration proposals, or hearing fees. Applicants should, however, file amendments to update information relevant to their applications. Any such cutoff lists or orders adopted prior to the imposition of this freeze will be suspended for the period of the freeze. No cases will be designated for hearings involving a standard comparative issue.

The Commission, Review Board, and Administrative Law Judges will continue to issue decisions only in cases in which consideration of the applicants' comparative qualifications is unnecessary to resolve the case, and appeals will be entertained only of such decisions. ALJs will, however, continue to take evidence with respect to already specified basic qualifying issues or 307(b) issues in pending cases. Where a proceeding has been remanded to an ALJ for consideration of a basic qualifications issue, the ALJ will issue a supplemental initial decision addressing the remanded issue. All other procedures involving the filing of pleadings and preparation of decisions involving analysis of applicants' comparative proposals will be held in abeyance. Proceedings for the selection of noncommercial educational licensees will not be affected because they involve standards unrelated to those considered in Bechtel.

Because the final resolution of the issues raised by Bechtel may take some time, the Commission wishes to facilitate both pre- and post-designation settlements among pending applicants. To this end, the Chief Administrative Law Judge will appoint settlement judges, who will have the authority to convene conferences for the applicants to explore the possibility of voluntary settlements. Settlements conforming to Commission policy may be submitted, depending on the status of the proceeding, to the Commission, Review Board, or ALJ with jurisdiction over the proceeding, as appropriate, and approved during the freeze in accordance with the Commission's current policies governing such settlements. In view of Bechtel, prevailing applicants will not be required to adhere to their integration proposals in such settlements.

Action by the Commission: February 24, 1994, by Public Notice (FCC 94-41). Chairman Hundt, Commissioners Quello and Barrett.

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