

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Amendment of Section 1.4 of
the Commission's Rules Relating to
Computation of Time

MEMORANDUM OPINION AND ORDER

Adopted: May 17, 2000; Released: June 2, 2000

By the Commission:

1. In this order we make minor amendments to the Commission's computation of time rule, 47 C.F.R. § 1.4, to clarify the rule. We clarify that the date of "public notice" for all rulemaking documents required by the Administrative Procedure Act (APA), 5 U.S.C. § 552(a), 553, to be published in the Federal Register, is the date of publication in the Federal Register. We also clarify the date of "public notice" for Commission determinations in section 271 proceedings, 47 U.S.C. § 271.

2. Section 1.4 establishes the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions. Section 1.4(b) provides that unless otherwise indicated, the first day to be counted when a time period begins with an action taken by the Commission is the day after the day on which "public notice" of the action is given. Section 1.4(b)(1) defines the term "public notice" for documents in "notice and comment rulemaking proceedings" as the date of publication in the Federal Register, and section 1.4(b)(2) defines "public notice" for non-rulemaking documents as the release date, whether or not the document is published in the Federal Register.

3. The existing rules do not indicate specifically what the date of "public notice" should be for rulemaking documents required to be published in the Federal Register, see 5 U.S.C. §§ 552(a)(C)-(E), 553(b), but that are adopted without notice and comment in accordance with the exceptions provided in the APA. Such rulemakings include rules involving a military or foreign affairs function, interpretive rules, rules of agency organization procedure or practice, general statements of policy, or rules adopted when the agency for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. 5 U.S.C. § 553(a),(b)(A), (B). In order to make clear what the "public notice" date is for these non-notice and comment rulemaking proceedings, we are amending section 1.4(b)(1). The rule will now

indicate that the date of publication in the Federal Register is the date of "public notice" for all notice and comment rulemakings and for all rulemaking documents required by the APA to be published in the Federal Register. We note that interlocutory procedural rulings in rulemaking proceedings, such as orders granting extensions of time or other miscellaneous procedural orders that directly pertain to a rulemaking itself, are governed by amended section 1.4(b)(1), because these procedural orders in rulemaking dockets are required to be published in the Federal Register.

4. We also clarify that proceedings that do not fall within the class of rulemaking decisions that must be published in the Federal Register, such as adjudicatory matters, e.g. individual licensing decisions and waivers as to specific parties, do not come within the scope of section 1.4(b)(1), even if the decisions happen to be related to, or issued in, an on-going rule making docket. In so doing, we expressly depart from the interpretation of our computation of time rule that was announced in Adams Telcom, Inc. v. FCC, 997 F.2d 955 (D.C. Cir. 1993). The date of public notice for decisions in such non-rulemaking matters is the release date of the document that contains the Commission's decision, not the date of publication in the Federal Register.

5. Finally, we are amending section 1.4(b)(2) to make clear that "public notice" for section 271 determinations is the date of release of the Commission's decision. Section 271(d)(5) of the Communications Act, 47 U.S.C. § 271(d)(5), adopted as part of the Telecommunications Act of 1996, requires the Commission, not later than 10 days after issuing a determination approving or denying an authorization request from a Bell Operating Company to provide interLATA services pursuant to section 271, to publish a brief description of its written determination in the Federal Register. Although the statute requires their publication in the Federal Register, decisions with respect to section 271 applications are adjudications, not rulemakings. The brief summaries of the Commission's section 271 determinations thus appear in the notices category of the Federal Register, not the rules category. Consistent with their adjudicatory status, the date of public notice for section 271 decisions is properly the date of release, and the rules are amended to state this explicitly.

6. The rule amendments adopted herein involve rules of agency organization, procedure, or practice, and the notice and comment and effective date provisions of the Administrative Procedure Act are therefore inapplicable. 5 U.S.C. § 553(b)(A), (d).

7. Because members of the public relied on the prior interpretation of our rules announced in Adams Telcom, Inc., the amended rule as it applies with respect to these adjudicatory decisions (and which is explained in a new note to amended section 1.4(b)(1)), applies only to Commission decisions released on or after the effective date of the amended rule. The other clarifications to the computation of time rules contained in this order are, however, applicable to all Commission decisions, whether released before or after the effective date of the

new rules, as they merely codify existing interpretations and practice.

8. ACCORDINGLY, IT IS ORDERED, That pursuant to sections 4(i), 4(j), 303(r), 47 U.S.C. §§ 4(i), 4(j), 303(r), 47 C.F.R. Part I IS AMENDED as set forth below, effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX

Part I of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part I continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Subsections (b)(1) and (b)(2) of section 1.4 are amended by deleting the existing sentences and substituting the following:

§ 1.4(b)

(1) For all documents in notice and comment and non-notice and comment rulemaking proceedings required by the Administrative Procedure Act, 5 U.S.C. §§ 552, 553, to be published in the Federal Register, including summaries thereof, the date of publication in the Federal Register.

Note: licensing and other adjudicatory decisions with respect to specific parties that may be associated with or contained in rulemaking documents are governed by the provisions of section 1.4(b)(2).

(2) For non-rulemaking documents released by the Commission or staff, including the Commission's section 271 determinations, 47 U.S.C. § 271, the release date.
