

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Amendment of Certain of the Commission's ) GC Docket No. 10-44  
Part 1 Rules of Practice and Procedure and )  
Part 0 Rules of Commission Organization )

**REPORT AND ORDER**

**Adopted: February 3, 2011**

**Released: February 4, 2011**

By the Commission:

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**I. INTRODUCTION**

1. In this Order, we revise portions of the Commission's Part 1 procedural rules and Part 0 organizational rules. We determine that these revisions, which we detail in Appendix A, will increase the efficiency of Commission decision-making, modernize Commission procedures for the digital age, and enhance the openness and transparency of Commission proceedings for

practitioners and the public.<sup>1</sup>

2. As outlined in the Notice of Proposed Rulemaking that commenced this proceeding, the rule revisions fall into three general categories.<sup>2</sup> First, we increase the efficiency of our docket management and enhance public participation by broadening the use of docketed proceedings; expanding the requirement for electronic filing (and reducing the scope of the obligation to file paper copies); and permitting staff in certain circumstances to notify parties electronically of docket filings and to close inactive dockets. Second, we delegate authority to the staff to dismiss or deny defective or repetitive petitions for reconsideration of Commission decisions, and we amend the rule that authorizes the Commission to reconsider a decision on its own motion within 30 days to make clear that the Commission may modify a decision (not merely set it aside or vacate it). Finally, we implement changes to miscellaneous Part 1 and Part 0 rules: With respect to our Part 1 procedural rules, we set a default effective date for FCC rules in the event the Commission does not specify an effective date in a rulemaking order; revise our computation of time rule to adopt the “next business day” approach when a Commission rule or order specifies that Commission action shall occur on a day when the agency is not open for business; clarify when the Commission’s Headquarters and other offices will be considered to be open for business; and correct typographical errors in two debt collection rules. With respect to the Part 0 organizational rules, we make a number of minor rules changes regarding requests under the Freedom of Information Act (FOIA) in order to correct errors or omissions that have come to our attention since 2008, when we last amended these rules.

3. We initiated this proceeding in order to solicit public input on reforms that would make the Commission’s decision-making process more efficient, modern, and transparent.<sup>3</sup> A wide variety of interested parties commented on our proposals.<sup>4</sup> Although commenters focused on various proposals within the *Notice*, or occasionally suggested unique approaches to a given proposal, they strongly supported the Commission’s overall goals. This Report and Order describes our reforms to our rules and explains how they will enable the Commission to meet these goals.

## II. DISCUSSION

### A. Docket Management

4. In the *Notice*, we proposed a number of steps to bring Commission practice and

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<sup>1</sup> Because the Part 1 and Part 0 rules are procedural and organizational in nature, notice and comment are not required under the Administrative Procedure Act. *See* 5 U.S.C. § 553(b)(A) (notice and comment rulemaking requirements do not apply to rules of agency organization, procedure, or practice). Accordingly, any subsequent changes to these rules may be effected without the full public proceeding we have chosen to conduct in this instance.

<sup>2</sup> *See Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Notice of Proposed Rulemaking, 25 FCC Rcd 2430, 2430, para. 2 (2010) (*Notice*).

<sup>3</sup> *See* FCBA Committee Comments at 2 (*Notice* was “framed around these worthy objectives,” and “any reforms adopted by the Commission should help ensure the development of a full and complete record in each proceeding consistent with the principles of the Administrative Procedure Act”).

<sup>4</sup> A list of commenters and reply commenters is provided in Appendix B.

procedure into the digital age and to improve the efficiency of Commission decision-making. Among these were increased use of docketed proceedings, electronic filing of pleadings with the Commission, and electronic notifications to the parties to a proceeding. We discuss below these docket management proposals and the comments received on them.

### 1. Expanded Use of Docketed Proceedings

5. When we commenced this proceeding, we observed that many Commission proceedings are not docketed.<sup>5</sup> In such circumstances, the individual bureau or office handling the matter may assign the proceeding a unique file number or other identifier instead of a formal docket number, or may not assign a numerical identifier at all. Often, the record in non-docketed proceedings is in paper format only, thus precluding electronic searches and rendering it difficult for interested persons to follow and participate in these proceedings. Given these limitations, we indicated our interest in expanding the use of docketed proceedings to foster greater openness, transparency, and public participation in our work.<sup>6</sup> Specifically, we stated that we would seek to use the formal docketing process more often in Commission proceedings when technically feasible.<sup>7</sup> We sought comment on this general approach, as well as on particular questions of implementation.

6. Commenters generally supported the concept of expanding the docketing process to encompass more proceedings.<sup>8</sup> In terms of docketing as applied to specific categories of proceedings, we received only one negative and one affirmative suggestion. With respect to the former, Verizon and AT&T request that we not extend the docketing requirement to Enforcement Bureau (EB) investigations. Verizon explains that EB's ability to investigate depends upon its ability to keep inquiries discreet, and asserts that "[n]either the Bureau nor the parties under investigation would benefit from subjecting investigations to the formal docket process."<sup>9</sup> Similarly, AT&T states that many of EB's "routine[]" investigations "do not result in findings of wrongdoing or the issuance of a Notice of Apparent Liability [(NAL)]. As such, it would be inadvisable to docket these investigations."<sup>10</sup> Both parties maintain that the better approach would be for the Commission to predicate the docketing of an EB investigative proceeding on the issuance of an NAL.<sup>11</sup>

7. We agree that both EB and the parties under investigation have legitimate interests in keeping the investigative phase of a proceeding non-public. To the extent that formal docketing would impede these interests, we do not think the internal management benefits of assigning a docket number would outweigh the costs. Moreover, EB already assigns case numbers to investigative proceedings, so the assignment of a docket number is not necessary in order to ensure that the Paperwork Reduction Act (PRA) does not limit EB's ability to collect

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<sup>5</sup> See Notice, 25 FCC Rcd at 2433, para. 10.

<sup>6</sup> See *id.* at 2433-34, para. 11.

<sup>7</sup> See *id.*

<sup>8</sup> See, e.g., Sprint Nextel Comments at 10 ("The use of formal docketing in conjunction with record maintenance in ECFS should be extended to all Commission proceedings not already subject to electronic filing and record maintenance to the maximum extent technically and practically feasible."); Verizon Comments at 6; NAB Reply Comments at 6.

<sup>9</sup> Verizon Comments at 6.

<sup>10</sup> AT&T Comments at 2.

<sup>11</sup> See Verizon Comments at 6; AT&T Comments at 2.

information from private parties in the course of its investigations.<sup>12</sup> For these reasons, we will not require EB to assign a docket number to investigative proceedings prior to the issuance of an NAL.

8. If an NAL has been issued, however, we believe that the public interest in being able to access information about the proceeding is greater and outweighs the (diminished) interests that support protecting the investigation from public view. Thus, we determine that a docket number should be assigned to an enforcement proceeding in which EB has issued an NAL, even if the NAL has not been publicly released. We emphasize our intention that docketing should not frustrate the agency's and parties' interests in conducting a thorough, fair investigation. To that end, we note that parties may seek confidential treatment of submissions made in response to an NAL to the extent that such treatment is consistent with Section 0.459 of our rules.<sup>13</sup> We also observe that enforcement proceedings are restricted for purposes of our *ex parte* rules after the issuance of an NAL, and that non-parties must abide by the requirements applicable to such proceedings.<sup>14</sup>

9. Commenter Media Access Project urges the Commission to “assign a docket number to any broadcast application for renewal, assignment or transfer as to which there is a timely filed petition to deny.”<sup>15</sup> We agree with MAP's suggestion, finding that the Commission and the public would benefit from the wider airing of views that the assignment of a docket number would facilitate.

10. More generally, we believe that a bureau or office (with the exception of EB, to the extent discussed above) should assign a docket number to proceedings within its jurisdiction in all but exceptional circumstances. For example, we anticipate prompt migration of the following illustrative categories of proceedings to numbered docketing: Newly filed formal complaints concerning common carriers under Section 208<sup>16</sup> and newly filed pole attachment complaints under Section 224<sup>17</sup>; customer proprietary network information (CPNI) proceedings;<sup>18</sup> Cable Special Relief petitions;<sup>19</sup> proceedings involving Over-the-Air Reception Devices;<sup>20</sup> and common carrier certifications.<sup>21</sup> We delegate authority to the Consumer and

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<sup>12</sup> See 44 U.S.C. § 3518 (agency investigation “against specific individuals or entities” not subject to PRA's requirement that Office of Management and Budget must approve agency information collection propounded to ten or more entities or to substantially an entire industry); 5 C.F.R. § 1320.4 (restating PRA exemption outlined in 44 U.S.C. § 3518 and providing that exemption “applies during the entire course of the investigation, audit, or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or equivalent is opened with respect to a particular party”).

<sup>13</sup> See 47 C.F.R. § 0.459.

<sup>14</sup> See generally 47 C.F.R. §§ 1.1208 (rules applicable to restricted proceedings), 1.1212 (procedures for handling prohibited *ex parte* presentations).

<sup>15</sup> MAP Comments at 2.

<sup>16</sup> See 47 U.S.C. § 208; 47 C.F.R. §§ 1.720 *et seq.*

<sup>17</sup> See 47 U.S.C. § 224; 47 C.F.R. §§ 1.1401 *et seq.*

<sup>18</sup> See 47 U.S.C. § 222; 47 C.F.R. §§ 64.2001 *et seq.*

<sup>19</sup> See 47 C.F.R. §§ 76.7 *et seq.*

<sup>20</sup> See *id.* §§ 1.4000 *et seq.*

<sup>21</sup> See *id.* § 54.314.

Governmental Affairs Bureau (CGB), in consultation with the relevant bureaus and offices,<sup>22</sup> to issue a Public Notice (or Notices) announcing effective date(s) for numbered docketing of these and other particular categories of proceedings.<sup>23</sup> During this transition to a comprehensive docketing regime, we will permit bureaus and offices not to assign a formal docket number to certain proceedings if, in the considered judgment of staff, docketing would raise special technical difficulties (for instance, because the docketing process is not easily extended to existing systems such as the Universal Licensing System) or would impose undue burdens upon the Commission and its staff; would be of limited utility<sup>24</sup>; would not materially enhance public accessibility because, for instance, the filings in a proceeding could be accessed electronically in any event; or otherwise would not be in the public interest.

11. Finally, we address a related suggestion responding to the *Notice*. Verizon proposes that the Commission “revise its rules so that the time to file oppositions to Petitions for Declaratory Ruling is not governed by the default ten-day rule found in Rule 1.45(b).”<sup>25</sup> Instead, Verizon suggests that such petitions “should be treated like rulemakings: they should be docketed, and the Commission should specify filing dates in a public notice.”<sup>26</sup> Verizon explains that petitions for declaratory ruling often raise complicated questions of law and policy that require more than ten days to respond.<sup>27</sup> Additionally, because of delays in posting such petitions electronically, the actual response time can be even shorter.<sup>28</sup> Other commenters support this approach.<sup>29</sup>

12. We agree with Verizon’s suggestion. Our experience teaches that petitions for declaratory ruling can indeed raise issues sufficiently complex that ten days is not enough time for interested parties to respond fully. This problem is accentuated when petitions are not immediately accessible. We therefore determine that petitions for declaratory ruling should be handled in a similar manner to petitions for rulemaking under Section 1.106, rather than in accordance with Section 1.45(b). That is, each petition should be docketed (either within an existing active docket, if the issues raised within the petition are substantially related to that docket, or within a new docket if the issues raised do not substantially relate to a current proceeding); the particular bureau or office to which the petition has been submitted should seek comment on the petition via public notice; the default filing deadline for responsive pleadings to a docketed petition will be 30 days from the release date of the public notice, unless the bureau or office specifies otherwise; and the default filing deadline for any replies will be 15 days thereafter, unless the bureau or office specifies otherwise.<sup>30</sup> We will amend the existing rule

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<sup>22</sup> We note that other bureaus and offices may wish to complete independent proceedings to transition matters within their jurisdiction into the formal docketing process, and direct CGB to take particular care to consult with the bureaus and offices in this regard.

<sup>23</sup> We note that any subsequent determination that specific proceedings (or types of proceedings) should be docketed will not require the use of notice and comment procedures to the extent that those changes would involve matters of agency procedure and practice. See 5 U.S.C. § 553(b)(A).

<sup>24</sup> See *Notice*, 25 FCC Rcd at 2434, para. 11 n.16; Bahr Reply Comments at 3 (same).

<sup>25</sup> Verizon Comments at 5-6.

<sup>26</sup> *Id.* (citing 47 C.F.R. § 1.45(b)).

<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.*

<sup>29</sup> See AT&T Reply Comments at 1-2; NASUCA Reply Comments at 7.

<sup>30</sup> Cf. *Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934*, Report and Order, 15 FCC Rcd 22821, 22825, para. 11 (2000) (setting a similar pleading cycle); 47 C.F.R. § 1.4000(e) (setting a similar pleading cycle with respect to petitions for

involving declaratory rulings, Section 1.2, to reflect these requirements.<sup>31</sup>

## 2. Greater Use of Electronic Filing

13. As we observed in the *Notice*, the Commission amended its rules over a decade ago to permit electronic filing via the Internet of all pleadings in informal notice and comment rulemaking proceedings (other than broadcast allotment proceedings), notice of inquiry proceedings, and petition for rulemaking proceedings (except broadcast allotment proceedings).<sup>32</sup> We also noted that the Commission or staff, on a case-by-case basis, sometimes permits electronic filing through ECFS in certain adjudicatory proceedings. In light of the Commission's launch of a much-improved version of ECFS in October 2009,<sup>33</sup> we sought comment on whether and to what extent we ought to augment even further the use of electronic filing of pleadings through ECFS in Commission proceedings.

14. Commenters are broadly supportive of our proposal to expand the use of electronic filing, especially in tandem with our proposal to increase the use of the formal docketing process. Sprint Nextel, for instance, states that “[t]he use of formal docketing in conjunction with record maintenance in ECFS should be extended to all Commission proceedings not already subject to electronic filing and record maintenance to the maximum extent technically and practically feasible.”<sup>34</sup> NAB too supports this proposal, commenting that greater use of docketing, “along with the proposal to increase electronic filing, should enable interested parties to more easily locate, follow and participate in proceedings.”<sup>35</sup> Several other commenters voice similar assessments.<sup>36</sup> We therefore find it in the public interest to require the use of electronic filing whenever technically feasible. We amend Section 1.49 accordingly.

15. To begin the implementation of this policy, and in conjunction with our decision to expand the use of numbered docketing,<sup>37</sup> we will require migration of the following categories of proceedings to a fully electronic filing format via ECFS: Newly filed Section 208 formal common carrier complaints<sup>38</sup> and newly filed Section 224 pole attachment complaints before the

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declaratory ruling involving restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services).

<sup>31</sup> See 47 C.F.R. § 1.2 (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”).

<sup>32</sup> See *Notice*, 25 FCC Rcd at 2434, para. 12 (citing 47 C.F.R. § 1.49(f); *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998)).

<sup>33</sup> See News Release, “FCC Announces the Public Launch of the Electronic Comment Filing System (ECFS) Version 2.0” (Oct. 14, 2009), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-293952A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293952A1.pdf).

<sup>34</sup> Sprint Nextel Comments at 10.

<sup>35</sup> NAB Reply Comments at 6-7.

<sup>36</sup> See, e.g., ACA Comments at 6 (“ACA supports the electronic filing of pleadings through ECFS in other non-docketed Commission proceedings as well. The benefits to electronic filing are the same in both docketed and non-docketed proceedings.”); Bahr Comments at 1 (“Electronic filing should be available for all documents filed at the Commission.”); Verizon Comments at 6 (“Using ECFS in a broader array of dockets would benefit parties and benefit the Commission Staff.”).

<sup>37</sup> See *supra* paragraph 10. The migration of particular types of proceedings to both numbered docketing and electronic filing through ECFS will enable greater accessibility and transparency with respect to filings in these proceedings, as compared to filings made in paper format in non-docketed proceedings.

<sup>38</sup> See 47 U.S.C. § 208; 47 C.F.R. §§ 1.720 *et seq.*

Enforcement Bureau;<sup>39</sup> customer proprietary network information (CPNI) proceedings;<sup>40</sup> Cable Special Relief petitions;<sup>41</sup> proceedings involving Over-the-Air Reception Devices;<sup>42</sup> and certain certifications for common carriers.<sup>43</sup> We anticipate that in future orders we will extend the electronic filing requirement to other categories of proceedings.<sup>44</sup> During the transition to a comprehensive electronic filing regime, we will permit bureaus and offices to permit paper filing in specific proceedings within the categories listed above, after notice to the public, if such a requirement would raise special technical difficulties or impose undue burdens upon the Commission and its staff; would not materially enhance public accessibility because, for instance, the filings in a proceeding could be accessed electronically in any event; or otherwise would not be in the public interest.

16. In the *Notice*, we also sought comment on the implications of an electronic filing requirement for parties wishing to submit materials under a request for confidentiality.<sup>45</sup> The record evinces a general consensus that the Commission should require parties seeking confidential treatment of a portion of a filing to submit electronically a redacted version of the document. For instance, Verizon states that “redacted versions of confidential filings should be filed electronically, but not the confidential filings themselves.”<sup>46</sup> Similarly, ACA comments that the Commission “should require that parties electronically submit the redacted versions of these filings in instances where confidentiality is necessary.”<sup>47</sup> Qwest offers a precedent for this approach, pointing out that “[t]oday, common carriers that file tariffs can include confidential material with their [Electronic Tariff Filing System, or ETFS] tariff filings by identifying the particular file that contains confidential information when they electronically file, which shields the confidential file from public view.”<sup>48</sup>

17. We agree with these commenters and determine both that confidential filings ought to continue to be made in paper format and that in proceedings subject to electronic filing, parties seeking confidential treatment of a portion of a filing must submit in electronic format either a redacted version of the document<sup>49</sup> or an affidavit that it is impossible to submit a

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<sup>39</sup> See 47 U.S.C. § 224; 47 C.F.R. §§ 1.1401 *et seq.*

<sup>40</sup> See 47 U.S.C. § 222; 47 C.F.R. §§ 64.2001 *et seq.*

<sup>41</sup> See 47 C.F.R. §§ 76.7 *et seq.*

<sup>42</sup> See *id.* §§ 1.4000 *et seq.*

<sup>43</sup> See *id.* § 54.314.

<sup>44</sup> Any subsequent determination that parties should be required to file all pleadings in specific proceedings (or types of proceedings) through ECFS would not require the use of notice and comment procedures to the extent that those changes would involve matters of agency procedure and practice. See 5 U.S.C. § 553(b)(A).

<sup>45</sup> See *Notice*, 25 FCC Rcd at 2435, para. 14 (citing 47 C.F.R. § 0.459).

<sup>46</sup> Verizon Comments at 6-7.

<sup>47</sup> ACA Comments at 6.

<sup>48</sup> Qwest Comments at 2-3; see also *Electronic Tariff Filing System (ETFS)*, Notice of Proposed Rulemaking, 25 FCC Rcd 9513, 9514, para. 3 n.10 (2010) (*ETFS NPRM*) (“ETFS provides the public access to non-confidential, electronically filed tariffs and associated documents generally within a few minutes of the filing being received by ETFS. . . . ETFS also provides for filing of [local exchange carriers’] confidential data which may be viewed by authorized Commission staff.”).

<sup>49</sup> Filers will be responsible for ensuring that the redacted material within an electronic filing is not viewable or accessible. The Commission will not be responsible for the inadvertent disclosure of information submitted in

redacted document consistent with Section 0.459 of the Commission's rules.<sup>50</sup> In extreme cases, where a party demonstrates that even the fact of the filing must remain confidential and that Section 0.459 permits this, the affidavit may be filed in paper format under seal. This approach will ensure an appropriate balance between the twin goals of openness and transparency, on one hand, and protection of legitimate claims of confidentiality on the other.

18. An additional issue we raised in the *Notice* concerned the Commission's use of electronic filing mechanisms other than ECFS.<sup>51</sup> We did not receive specific comment on whether and how these systems, and the filing requirements attendant to each, should be harmonized with ECFS. Because the Commission currently is considering reforms to some of these other systems, such as ETFS and the Universal Licensing System,<sup>52</sup> and envisions establishing a single portal for all Commission licensing systems,<sup>53</sup> we reserve judgment at this time as to the issues involving the interplay between ECFS and other systems (such as, for example, whether filers using those systems also should be permitted to file or precluded from filing in ECFS). These issues will be addressed as new systems are developed and brought online.

19. We also sought comment on whether electronic filings through ECFS or our other electronic filing systems should be "machine readable."<sup>54</sup> Specifically, we asked whether to require the submission of text filings in a searchable format (e.g., the Microsoft Word ".doc" format or the non-copy protected, text-searchable Adobe ".pdf" format), and whether to require that submissions containing non-text information, particularly spreadsheets of data, be submitted in the format in which they were created, such as Microsoft Excel, Microsoft Word, or Microsoft PowerPoint ("native format").<sup>55</sup> One commenter offers a detailed discussion of why machine readability and other measures (such as more complete metadata and the use of a single, unique identifier for each filer) would improve public access to the Commission's work.<sup>56</sup> However, another commenter suggests that the redacted versions of confidential filings that are submitted electronically should not have to be made machine readable.<sup>57</sup> The FCBA Committee adds that "[w]hile electronic filing should be promoted to the greatest extent possible, requiring that submissions be made in a certain format such as 'native formats' could be problematic because of concerns regarding metadata and confidentiality."<sup>58</sup>

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electronic format due to a filer's failure adequately to protect redacted material or otherwise to comply with filing requirements.

<sup>50</sup> See 47 C.F.R. § 0.459; see also *infra* Appendix A (detailing changes to Section 0.459).

<sup>51</sup> See *Notice*, 25 FCC Rcd at 2435, para. 15; see also <http://reboot.fcc.gov/reform/systems/> (listing several electronic filing systems in use at the Commission).

<sup>52</sup> See generally *ETFS NPRM*, 25 FCC Rcd at 9514-20, paras. 4-16.

<sup>53</sup> See <http://reboot.fcc.gov/reform/systems/cls> (Consolidated Licensing System "would provide the public with a single portal to access all of the FCC's licensing systems" through which parties could "accept applications; track fee payments; provide automated outputs such as Public Notices, letters, and authorizations; perform clearance checks; automate processing; and offer searches").

<sup>54</sup> See *Notice*, 25 FCC Rcd at 2435-36, para. 16.

<sup>55</sup> See *id.*

<sup>56</sup> See de Vries Comments at 5-12.

<sup>57</sup> See Verizon Comments at 7.

<sup>58</sup> See FCBA Committee Comments at 5.

20. We believe that the general familiarity of interested parties with the software or formats typically used to submit comments to the Commission, as well as the measures we take with respect to confidentiality elsewhere in this Report and Order,<sup>59</sup> alleviate the concerns expressed by the FCBA Committee regarding metadata and confidentiality. Therefore, consistent with the goal of expanding the ability of interested parties to examine and test information that has been submitted to the government,<sup>60</sup> we believe that electronic filings with the Commission should be machine readable whenever technically possible. In particular, filings containing text should be submitted in a format conducive to electronic search and/or copying, such as a Microsoft Word document or an Adobe .pdf copy. Similarly, filings containing non-text information should be submitted in native format such that, for example, third parties can sort the spreadsheet data within a filing using Microsoft Excel or similar programs. In cases of attachments exceeding 500 pages, information to be submitted in a format that does not permit electronic filing, and other exceptional circumstances, we will consider a waiver of the electronic filing requirement on a case-by-case basis, similar to the approach taken in our contemporaneous order reforming our *ex parte* rules.<sup>61</sup> Finally, filings submitted to ECFS in .pdf or similar format should not be locked or password-protected. Failure to abide by this requirement may result in rejection by the filing system, and parties will have to resubmit by the filing deadline a machine-readable file that meets this requirement. We direct CGB, in consultation with other bureaus and offices as necessary, to further develop requirements embodying these principles and to publish by public notice any additional technical rules or standards that may be necessary to implement our decision.<sup>62</sup>

21. Finally, consistent with our goal of minimizing paper submissions to the Commission, we amend Sections 1.51 and 1.419 of our rules to provide that parties are required to file with the Commission only one original and one copy of each submission made in paper format, unless another Commission rule specifically provides otherwise.<sup>63</sup> In addition to easing the practical burdens of participation on parties and members of the general public (for example, in some circumstances, our rules currently require the submission of an original and 14 copies of a filing<sup>64</sup>), this reform will lessen the storage demands on Commission staff and promote more environmentally sustainable agency practice.<sup>65</sup>

### 3. Electronic Notification in Certain Proceedings

22. Section 1.47 of the Commission's rules requires agency service of copies of orders, pleadings, and other documents on parties to a proceeding when required by statute or

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<sup>59</sup> See *supra* paragraph 17.

<sup>60</sup> See Office of Mgmt. & Budget, Exec. Office of the President, OMB M-10-06, Open Government Directive, at 2 (2009), available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf) ("To increase accountability, promote informed participation by the public, and create economic opportunity, each agency shall take prompt steps to expand access to information by making it available online in open formats.").

<sup>61</sup> See *Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, FCC 11-11, GC Docket No. 10-43, Report and Order, at para. 55 (Feb. 2, 2011) (citing D.D.C. LCvR 5.4(e)(1)).

<sup>62</sup> We will not take action at this time with respect to the treatment of metadata contained within filings made with the Commission, although we will revisit the issue as circumstances warrant.

<sup>63</sup> See, e.g., 47 C.F.R. § 1.735(b) (filing obligation with respect to formal complaints); 47 C.F.R. § 63.52(a) (filing obligation with respect to applications under Section 214 of the Communications Act).

<sup>64</sup> See *id.* § 1.51(a)(2) (filing rule for hearing proceedings in matters to be acted upon by the Commission).

<sup>65</sup> We adopt these procedural rules changes without notice and comment. See 5 U.S.C. § 553(b)(A).

regulation.<sup>66</sup> Typically, such service is made by mail.<sup>67</sup> As we observed in the *Notice*, this process can be cumbersome and time-consuming, particularly when many parties participate in a particular proceeding or when every document in a long-running docket must be served on every party over the life of the proceeding.<sup>68</sup> In order to streamline Commission processes and improve efficiency, we amend Section 1.47 of the Commission's rules to allow the agency to serve parties to a proceeding in an electronic format (*e.g.*, email or an Internet-based notification system such as an RSS feed) following any change in the docket, to the extent the Commission is required to serve such parties.<sup>69</sup> In a proceeding involving a large number of parties, we determine that the Commission's service obligation will be satisfied by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents.<sup>70</sup> We will allow staff to decide the appropriate format for electronic notification in a particular proceeding, consistent with any applicable statutory requirements, but expect that service by public notice will be used only in proceedings with 20 or more parties.<sup>71</sup>

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<sup>66</sup> See 47 C.F.R. § 1.47(a); *see also id.* § 0.445(a) (stating that adjudicatory opinions and orders of the Commission or staff on delegated authority "sent to the parties by mail").

<sup>67</sup> *See id.* § 1.47(f).

<sup>68</sup> *See Notice*, 25 FCC Rcd at 2436, para. 17.

<sup>69</sup> See 47 C.F.R. § 1.211 (service rules in hearing proceedings); FCBA Committee Comments at 8 ("The Committee agrees that service from the Commission and other parties by well-established and widely-adopted electronic means (*e.g.*, email) should be permitted."). We make conforming changes to Section 0.445.

<sup>70</sup> *See Qwest Comments* at 3 (supporting aforementioned changes to the Commission's rules).

<sup>71</sup> We also note a related provision by which staff currently may notify outside parties that information they have submitted to the Commission has been shared with other federal agencies. See 47 C.F.R. § 0.442(d)(1) (providing that "a party who furnished records to the Commission with a request for confidential treatment . . . will be notified at the time that the request for disclosure is submitted and will be afforded ten calendar days in which to submit an opposition to disclosure. This notification may be made either individually or by public notice.").

#### 4. Termination of Dormant Proceedings

23. Mindful of the more than three thousand open dockets at the Commission, we proposed in the *Notice* to adopt rules permitting the termination of dormant proceedings.<sup>72</sup> This proposal garnered general support from commenters,<sup>73</sup> and we accordingly amend Section 0.141 of our organizational rules to delegate authority to the Chief of the CGB to review all open dockets periodically. When the CGB Chief identifies an open docket that appears to be a candidate for termination, the CGB Chief will consult with the Commission bureau or office with responsibility for that docket and, with the concurrence of the relevant bureau or office, will take the appropriate action to close the docket after public notice (as discussed in the next paragraph). Proceedings that are candidates for termination might include dockets in which no further action is required or contemplated and dockets in which no pleadings or other documents have been filed for several years. On the other hand, proceedings in which petitions addressing the merits are pending – for example, proceedings containing timely filed petitions for reconsideration that have not been addressed – should not be terminated under the authority delegated here unless the parties consent. We leave to the discretion of the CGB Chief the practical determinations involved in deciding which proceedings to terminate (*e.g.*, identifying a minimum period of dormancy that might indicate a particular docket should be considered for termination).<sup>74</sup>

24. Commenters suggest that the Commission should issue a public notice identifying dockets under consideration for termination and afford interested persons an opportunity to comment before any particular proceeding is terminated.<sup>75</sup> We agree with this suggestion based upon considerations of fairness and openness, and incorporate it into our delegation of authority. That is, the issuance of a public notice and a reasonable opportunity for public input will be conditions precedent to termination. The termination of a dormant proceeding also will be considered to include dismissal as moot of any pending petition, motion, or other request for relief in that proceeding that is procedural in nature or otherwise does not address the merits of the proceeding. A party aggrieved by a termination under this delegation of authority may file a petition for reconsideration with the Consumer and Governmental Affairs Bureau or an application for review with the full Commission.<sup>76</sup>

#### B. Reconsideration of Agency Decisions

25. In the *Notice*, we discussed our current rules regarding reconsideration of Commission orders, noting that updating these rules could promote more efficient and accessible decision-making and give the Commission beneficial procedural flexibility in performing its functions.<sup>77</sup> We then set forth and sought comment upon several proposals for reforming these rules. Below, we address the two categories of rules on reconsideration that we identified in the *Notice*: first, petitions for reconsideration in rulemaking and adjudicatory proceedings, and

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<sup>72</sup> See *Notice*, 25 FCC Rcd at 2436, paras. 18-19.

<sup>73</sup> See Qwest Comments at 3-4; Verizon Comments at 7; NASUCA Comments at 7.

<sup>74</sup> We reiterate that the record in a terminated docket remains part of the Commission's official records, and that the various pleadings, orders, and other documents in that docket will continue to be accessible to the public post-termination.

<sup>75</sup> See Qwest Comments at 4; AT&T Comments at 2-3, 5; Verizon Comments at 7; NASUCA Comments at 7; FCBA Committee Comments at 8-9.

<sup>76</sup> See 47 U.S.C. § 155(c)(4); 47 C.F.R. § 1.115(a); 47 C.F.R. § 1.106.

<sup>77</sup> See *Notice*, 25 FCC Rcd at 2431-33, paras. 3-7.

second, reconsideration on the Commission's own motion.

## 1. Sections 1.106 and 1.429 – Petitions for Reconsideration

26. Two procedural rules govern petitions for reconsideration of Commission orders. Section 1.429 applies to petitions for reconsideration of final orders issued in notice and comment rulemaking proceedings,<sup>78</sup> while Section 1.106 is a “catch-all” provision for petitions for reconsideration in agency adjudications.<sup>79</sup> As an initial matter, we noted in the *Notice* that the captions of the two rules are generic and do not explicitly reflect the dichotomy between rulemaking and adjudication.<sup>80</sup> We adopt our proposal to change the captions of these rules in order to clarify this dichotomy. Specifically, we revise the captions for Sections 1.106 and 1.429 to “Petitions for reconsideration in non-rulemaking proceedings” and “Petitions for reconsideration of final orders in rulemaking proceedings,” respectively. This proposal (which no commenter opposed) is a non-substantive clarification that should aid practitioners and the public in distinguishing between the rules for reconsideration in each context.

27. We also amend these rules to allow the agency to resolve certain petitions for reconsideration more efficiently and expeditiously. The *Notice* observed that petitions for reconsideration filed with the Commission sometimes are procedurally defective or merely repeat arguments the Commission previously has rejected, and that policy considerations do not require that the full Commission address such petitions. Commenters generally supported this reasoning,<sup>81</sup> with two exceptions addressed below. Having considered the comments received, we will amend Sections 1.429 and 1.106 to authorize bureaus or offices to dismiss or deny petitions such as those described above on delegated authority. For a similarly procedurally defective or repetitive petition directed to a bureau or office (rather than the full Commission) seeking reconsideration of a staff-level decision, we delegate authority to the relevant bureau or office to dismiss or deny the petition.

28. For the guidance of staff and the public, we provide the following illustrative list of circumstances (which we first outlined in the *Notice*<sup>82</sup>) in which staff may dismiss or deny a reconsideration petition on the basis that it plainly does not warrant consideration by the full Commission: (1) a petitioner omits information required by the Commission’s rules to be included with a petition for reconsideration or otherwise fails to comply with procedural requirements set forth by the rules; (2) a petitioner fails to identify any material error, omission, or reason warranting reconsideration or fails to state with particularity the respects in which the petitioner believes the action taken should be changed; (3) a petitioner relies upon arguments that have been fully considered and rejected by the Commission within the same proceeding; (4) a petition relates to matters outside the scope of the order for which reconsideration has been requested; (5) a

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<sup>78</sup> See 47 C.F.R. § 1.429.

<sup>79</sup> See *id.* § 1.106.

<sup>80</sup> See *Notice*, 25 FCC Rcd at 2431, para. 3.

<sup>81</sup> See, e.g., Sprint Nextel Comments at 9-10 (“[T]he Commission’s proposal . . . will encourage rapid resolution of defective or repetitive petitions for reconsideration and also discourage the filing of frivolous petitions. . . . The criteria governing petitions for reconsideration that would be subject to this approach strike the appropriate balance between ensuring that parties with genuine grievances have the opportunity to be heard by the Commission with the Commission’s need to efficiently dispose of defective petitions or petitions that do not raise issues warranting reconsideration.”); AT&T Comments at 1 (“As a general proposition, the Commission’s proposal is sound, especially if it will lead to the speedier resolution of such petitions.”); MAP Comments at 1 (“The goal of streamlining the Commission’s workload by delegating authority to the staff to deal with plainly defective petitions for reconsideration is understandable and valid.”); NAB Reply Comments at 6 (“[W]e believe it is entirely appropriate to adopt rules to allow the staff to dismiss or deny defective or repetitive petitions for reconsideration.”).

<sup>82</sup> See *Notice*, 25 FCC Rcd at 2431, para. 4.

petitioner relies upon facts or arguments that could have been presented previously to the Commission or its staff but were not; (6) a petition relates to an order for which reconsideration has been previously denied on similar grounds; and (7) a petition was untimely filed.<sup>83</sup>

29. We do not believe the two concerns raised by commenters warrant a different approach. First, AT&T urges the Commission to craft an exclusive list of circumstances in which petitions for reconsideration could be dismissed or denied.<sup>84</sup> We decline the invitation to do so. Because it is difficult to foresee every circumstance in which staff appropriately should be allowed to exercise this authority, any list of circumstances that make consideration of a petition for reconsideration by the full Commission plainly unnecessary is bound to be underinclusive, depriving staff of the necessary flexibility to handle particular petitions. We therefore agree with NAB, which states that “because there may be other cases where petitions are not properly filed, we hesitate to endorse AT&T’s request to adopt an exclusive listing of such situations, rather than allowing some leeway for the staff to act in other appropriate cases.”<sup>85</sup>

30. Similarly, we do not believe that MAP’s concern with respect to three of the enumerated categories is well-founded. MAP contends that questions about whether an argument has been fully considered and rejected in a proceeding, whether an argument is outside the scope of the order for which reconsideration is sought, and whether new facts or arguments could have been presented previously (categories (3), (4), and (5) above) “involve subjective determinations that can frequently become intertwined with the merits of a petition.”<sup>86</sup> In such cases, MAP argues, petitioners should be entitled to Commission-level review. We disagree. It is true that deciding whether a petition fits within one of these categories (as well as the other illustrative categories) involves the exercise of some degree of subjective judgment. However, that is part and parcel of agency decision-making; our Part 0 delegations to staff cover many areas in which discretion must be exercised. Here, we expect that staff will refrain from exercising this authority to dismiss petitions for reconsideration in close cases, and will avoid dismissal on procedural grounds when it is in the public interest to do so. Moreover, to the extent that a party is aggrieved by a staff dismissal or denial of a petition for reconsideration under this provision, that party may file an application for review with the full Commission.<sup>87</sup>

31. In the *Notice*, we also proposed to require that persons filing petitions for reconsideration of Commission action do so through the Commission’s Electronic Comment Filing System (ECFS).<sup>88</sup> We did not receive comment on this proposal. For the reasons stated in the *Notice*, we will amend our rules to emphasize that in docketed proceedings, petitions for reconsideration submitted by electronic means other than ECFS (such as electronic mail) and petitions submitted directly to staff shall not be considered to have been properly filed, unless a

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<sup>83</sup> Because these particular circumstances exemplified the need to vest staff with this authority, we outlined and sought comment on them in the *Notice*. See 25 FCC Rcd at 2431, para. 4.

<sup>84</sup> See AT&T Comments at 2 (“[T]he better practice would be to tighten up the delegated authority by making the list *exclusive* and thereby avoid any future hassle over the basis used by the Bureau Chief to dismiss or deny without benefit of a full Commission review.”).

<sup>85</sup> NAB Reply Comments at 6 (footnote omitted).

<sup>86</sup> MAP Comments at 1-2.

<sup>87</sup> See 47 U.S.C. § 155(c)(4); 47 C.F.R. § 1.115(a). As noted in the *Notice*, in such cases, the filing of an application for review to the full Commission is a legal prerequisite for judicial review of the staff’s action on reconsideration. See 47 U.S.C. § 155(c)(7); 47 C.F.R. § 1.115(k); see also *infra* Appendix A (detailing revisions to 47 C.F.R. § 1.106(c)).

<sup>88</sup> See *Notice*, 25 FCC Rcd at 2432, para. 5.

law or rule specifically permits the alternative means of filing.<sup>89</sup>

32. Finally, we proposed in the *Notice* to amend Section 1.429 to provide that this rule, rather than the “catch-all” reconsideration provision in Section 1.106, applies to petitions for reconsideration of Commission orders adopting rules without notice and comment (such as orders establishing or amending rules of agency organization, procedure, or practice).<sup>90</sup> We received no comments on this approach. We determine that insofar as Section 1.429 sets forth the rules applicable to other rulemakings (*i.e.*, those involving notice and comment) and Section 1.106 applies generally to adjudications, the better approach is to apply the former to orders adopting rules without notice and comment. We adopt this proposal and amend the rules accordingly, as shown in Appendix A.

## 2. Section 1.108 – Reconsideration on the Commission’s Own Motion

33. In the *Notice*, we proposed to amend Section 1.108 of the Commission’s rules, captioned “Reconsideration on Commission’s own motion,” which provides that “[t]he Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules.”<sup>91</sup> One court has construed this provision narrowly to preclude Commission modification of an action.<sup>92</sup> Because the purpose of the rule is to provide the Commission a mechanism for exercising plenary power to reconsider actions on its own motion, we amend Section 1.108 to conform to the fuller definition of “reconsider” in Section 1.106(k)(1).<sup>93</sup> This change, which we adopt, will clarify that the greater power to set aside an action includes the lesser power of modification.

### C. Miscellaneous Part 1 Rules

34. We also proposed in the *Notice* to amend other Part 1 procedural rules to clarify and improve our practices.<sup>94</sup> We adopt these and other changes, as detailed below.

#### 1. Section 1.427 – Effective Date of Rules

35. Section 1.427(a), entitled “Effective date of rules,” provides that “[a]ny rule issued by the Commission will be made effective not less than 30 days from the time it is published in the Federal Register except as otherwise specified in paragraphs (b) and (c) of this

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<sup>89</sup> While a petition for reconsideration submitted by electronic mail does not satisfy filing requirements absent a rule specifically permitting such a submission, it is helpful nonetheless for the petitioner to send a copy of its properly filed reconsideration petition by electronic mail to any staff that the filer knows do or may have responsibility for the proceeding in question or the substantive issues at stake in the petition.

<sup>90</sup> *See id.* at 2432, para. 7; 5 U.S.C. § 553(b)(A).

<sup>91</sup> 47 C.F.R. § 1.108.

<sup>92</sup> *See Sprint Corp. v. FCC*, 315 F.3d 369, 375 (D.C. Cir. 2003) (holding that a Commission action “revising and modifying” a rule did not “merely set[] aside” the rule within the scope of section 1.108).

<sup>93</sup> *See* 47 C.F.R. § 1.106(k)(1) (with respect to petitions for reconsideration in non-rulemaking proceedings, the Commission’s authority to reconsider an action on its own motion includes the powers to reverse or modify an action, to remand a matter for further proceedings, or to initiate other further proceedings); *see also* FCBA Committee Comments at 9 (stating that this is an “appropriate ministerial change[] to clarify the Commission’s procedures”).

<sup>94</sup> *See Notice*, 25 FCC Rcd at 2437-39, paras. 21-25.

section.”<sup>95</sup> This provision contemplates that the Commission will specify in its rulemaking orders the effective date of adopted rules. While this typically is the case, the omission of such a statement can create confusion in the absence of a default rule on effective dates.<sup>96</sup> To forestall such confusion, we therefore amend Section 1.427(a) to provide that in the event a Commission order adopting a rule does not specify an effective date and does not affirmatively defer the setting of an effective date (*e.g.*, when an adopted rule requires approval by the Office of Management and Budget under the Paperwork Reduction Act), the rule will become effective 30 days after publication in the Federal Register unless a later effective date is required by statute or otherwise is specified by the Commission.<sup>97</sup>

## 2. Section 1.4 – Computation of Time

36. Deadlines for Commission Action Established by Rule. As noted in the *Notice*, uncertainty can arise when the Commission’s rules set a deadline for Commission action on a date when the agency is not open for business.<sup>98</sup> Although Section 1.4(j) of the Commission’s rules adopts a “next business day” standard when the due date for a party’s filing falls on such a date,<sup>99</sup> it does not address the parallel situation in which Commission action is due by regulation.<sup>100</sup> In order to provide clarity and guidance in such circumstances, we conclude that when the due date for Commission action otherwise would fall on a holiday, as defined by Section 1.4(e)(1) of the rules, that date will be extended to the next business day.<sup>101</sup>

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<sup>95</sup> 47 C.F.R. § 1.427(a). Subsection (b) relates to specified situations in which a rule can become effective with less than 30 days notice. Subsection (c) concerns rules altering the manner or form of keeping accounts by carriers. *See also* 5 U.S.C. § 553(d) (publication or service of rule shall not be made less than 30 days before effective date unless an exception applies).

<sup>96</sup> *See Notice*, 25 FCC Rcd at 2437, para. 22 & n.26 (citing *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd 21274, 21311, para. 110 (2002) (Federal Register notice for *Fourth Reconsideration Order* adopted an effective date while order itself omitted it)); *see also* Qwest Comments at 1 & n.1 (supporting this revision of the rule).

<sup>97</sup> For example, if a rule is determined to be a “major rule” under the Congressional Review Act, it generally may take effect unless Congress disapproves the rule 60 days after the rule is reported to Congress or is published in the Federal Register (if it is published), whichever is later. *See* 5 U.S.C. § 804(2); *see also* FCBA Committee Comments at 9 (stating that this is an “appropriate ministerial change[] to clarify the Commission’s procedures”).

<sup>98</sup> *See Notice*, 25 FCC Rcd at 2438, para. 23.

<sup>99</sup> *See* 47 C.F.R. §§ 1.4(j) (“Unless otherwise provided (*e.g.* § 76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be filed on the next business day. *See* paragraph (e)(1) of this section.”), 1.4(e)(1) (defining “holiday” to mean “Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission’s offices are closed and not reopened prior to 5:30 p.m.”).

<sup>100</sup> *See, e.g., id.* § 1.108 (Commission reconsideration on its own motion within 30 days); *id.* § 1.117 (Commission review of staff action under delegated authority within 40 days).

<sup>101</sup> *Cf.* FED. R. CIV. P. 6(a)(1)(C) (when computing “any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time,” if the last day of the period in question “is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday”); FED. R. CRIM. P. 45(a)(1)(C) (same); U.S. Court of Appeals for the District of Columbia Circuit, *Handbook of Practice and Internal Procedures*, at 10 (2010), available at <http://www/cadc.uscourts.gov/internet/home.nsf/content/Court+Rules+and+Operating+Procedures> (“In computing times prescribed for filings, . . . if the last day of the period falls on a Saturday, Sunday, or legal holiday, the period

37. Deadlines for Commission Action Established by Statute. We adopt a similar standard for statutory deadlines for Commission action, many of which arise under the Communications Act.<sup>102</sup> Specifically, in cases where a statutory deadline for Commission action falls on a holiday, as defined in Section 1.4(e)(1) of our rules, we will construe that deadline to require Commission action by the next business day, unless the statute provides otherwise.<sup>103</sup> To effect this change, we will amend Section 1.4(a) of our rules to clarify its application to statutory deadlines for Commission action and will add a new Section 1.4(l) that applies the “next business day” standard (with the caveat for any statutory filing requirement) in this context.

38. Definition of “Holiday.” As a matter of agency organization and practice, we adopt the following additional, clarifying change to Section 1.4(e)(1) of our rules. Section 1.4(e)(1) currently defines the term “holiday” as “Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission’s offices are closed and not reopened prior to 5:30 p.m. For example, a regularly scheduled Commission business day may become a holiday if its offices are closed prior to 5:30 p.m. due to adverse weather, emergency or other closing.”<sup>104</sup> We will change this rule in order expressly to address circumstances in which Commission Headquarters is closed but an office at a different Commission location is open, or a particular Commission office other than Headquarters is closed. Specifically, we amend Section 1.4(e)(1) to clarify that the term “holiday” includes any day on which either the Commission’s Headquarters are closed and not reopened prior to 5:30 p.m., or on which a Commission office aside from Headquarters is closed, but only with respect to filings that may be made in paper format at that non-Headquarters office or decisions that are issued by that office. For example, a regularly scheduled Commission business day may become a holiday with respect to the entire Commission if Headquarters is closed prior to 5:30 p.m. due to adverse weather, emergency or other closing, and a regularly scheduled Commission business day may become a holiday with respect to a particular Commission office aside from Headquarters if either Headquarters or that office is closed prior to 5:30 p.m. due to similar circumstances.

### 3. Sections 1.1164 and 1.1912

39. We make two clerical corrections to Sections 1.1164 and 1.1912.<sup>105</sup> Section (continued from previous page) is extended to the next business day.”); *see also* FCBA Committee Comments at 9 (stating that this is an “appropriate ministerial change[] to clarify the Commission’s procedures”).

<sup>102</sup> *See Notice*, 25 FCC Rcd at 2438, para. 24 & n.35 (citing 47 U.S.C. § 160(c) (deadline for Commission to rule on petitions for forbearance); 47 U.S.C. §§ 204(a)(2)(A) (deadline for Commission to issue an order concluding certain tariff investigations); 208(b) (deadline for Commission to issue an order concluding certain complaint investigations); and 271(d)(3) (deadline for Commission to issue an order approving or denying a Bell Operating Company application to provide “in-region” long distance service in a particular state)); *see also* 47 U.S.C. §§ 225(e)(2) (deadline for resolving complaints alleging violation of requirements for telecommunications relay services); 252(e)(5) (deadline for issuing an order preempting state commission jurisdiction over certain agreements between requesting telecommunications carrier and incumbent local exchange carrier); 260(b) (deadlines for resolving complaints involving telemessaging service); 275(c) (deadlines for resolving complaints involving alarm monitoring service); 405(b)(1) (deadline for action on petition for reconsideration of an order concluding a hearing under section 204(a) or concluding an investigation under section 208(b)).

<sup>103</sup> Section 10(c) of the Act, for example, provides that a petition for forbearance shall be deemed granted if the Commission does not deny it “within one year after the Commission receives it.” 47 U.S.C. § 160(c).

<sup>104</sup> 47 C.F.R. § 1.4(e)(1).

<sup>105</sup> These changes too are procedural in nature and are exempt from notice and comment requirements under the Administrative Procedure Act. *See* 5 U.S.C. § 553(b)(A).

1.1164 addresses penalties for late or insufficient regulatory fee payments. Section 1.1164(c) provides that “[i]f a regulatory fee is paid in a timely manner, the regulatee will be notified of its deficiency.”<sup>106</sup> We amend this section in order to clarify its application to regulatees that do *not* pay requisite fees in a timely manner. Second, 1.1912 establishes procedures for debt collection by administrative offset, and further provides that the Commission “may omit [these] procedures set forth in paragraph (a)(4)(i) of this section” under certain circumstances.<sup>107</sup> We will change the reference in this provision to “paragraph (b)(4)(i)” of Section 1.1912, which sets forth the relevant procedures.

#### D. Miscellaneous Part 0 Rules

40. Finally, we take this opportunity to make editorial changes to our regulations implementing the Freedom of Information Act (FOIA)<sup>108</sup> so as to address issues that have come to our attention since we last reviewed and amended these regulations.<sup>109</sup> Consistent with the Administrative Procedure Act, we adopt these corrective modifications without notice and comment.<sup>110</sup> In Section 0.453(c)(5), we inadvertently omitted the words “carrier-to-carrier” in the description of informal complaints that are routinely available, and will amend that subsection accordingly.<sup>111</sup> Section 0.459(f) incorrectly cites Section 0.457(g), instead of Section 0.457(d), and will be corrected.<sup>112</sup> In the *FOIA Rules* decision, we indicated that we were amending our rules “to require that written requests to obtain copies of records routinely available for public inspection must be processed through the Commission’s copy contractor under section 0.465.”<sup>113</sup> We did not amend Sections 0.460 or 0.465 to reflect these changes, and therefore do so here.<sup>114</sup> We also change the citation in Section 0.465(f) to Section 0.460(a) in order to reference the proper rule allowing persons to appear at the Commission to review or copy available records.<sup>115</sup> Section 0.461 refers to both calendar and business days, and will be corrected to consistently refer to calendar days.<sup>116</sup> The words “representation of the news media” in the last sentence of Section 0.466(a)(4) will be changed to “representative of the news media” to reflect the original intent of the law.<sup>117</sup> Section 0.467(a)(2) of our rules indicates that search

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<sup>106</sup> 47 C.F.R. § 1.1164(c).

<sup>107</sup> *Id.* § 1.1912(b)(4)(ii); see also *Amendments of Parts 0 and 1 of the Commission’s Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540, 6563 (App.) (2004) (containing similar reference to subsection (a)(4)(i)).

<sup>108</sup> 5 U.S.C. § 552.

<sup>109</sup> See *Amendment of Part 0 of the Commission’s Rules Regarding Public Information, the Inspection of Records, and Implementing the Freedom of Information Act*, Order, 24 FCC Rcd 6904 (2008) (*FOIA Rules*).

<sup>110</sup> See *id.* at 6913 n.70 (citing 5 U.S.C. § 553(b)(A)).

<sup>111</sup> See 47 C.F.R. § 0.453(c)(5).

<sup>112</sup> See *id.* §§ 0.459(f), 0.457(d), and 0.457(g).

<sup>113</sup> See *FOIA Rules*, 24 FCC Rcd at 6907, para. 11.

<sup>114</sup> See *infra* Appendix A (detailing revisions to 47 C.F.R. §§ 0.460(e) and 0.465(f)).

<sup>115</sup> See 47 C.F.R. § 0.465(f).

<sup>116</sup> See *id.* § 0.461(d)(3), (j).

<sup>117</sup> *Id.* § 0.466(a)(4).

and review fees for Commission employees are computed at the General Schedule level plus personnel benefits, but this does not include “other non-FCC personnel who conduct a search” as provided in Section 0.467(a)(1).<sup>118</sup> We will amend Section 0.467(a)(2) to include such personnel. Finally, Section 0.470(b)(1) refers to copying pages, but also refers to microfiches and computer printouts.<sup>119</sup> We will eliminate the latter obsolete references.

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<sup>118</sup> *Id.* §§ 0.467(a)(1)-(2).

<sup>119</sup> *See id.* § 0.470(b)(1).

### III. PROCEDURAL MATTERS

41. Regulatory Flexibility Act. Our action does not require notice and comment,<sup>120</sup> and therefore is not subject to the Regulatory Flexibility Act of 1980, as amended.<sup>121</sup> We nonetheless note that we anticipate that the rules we adopt today will not have a significant economic impact on a substantial number of small entities. As described above, in proposing to revise certain of our Part 1 Rules of Practice and Procedure and our Part 0 Rules of Commission Organization, we primarily change our own internal procedures and organization and do not impose substantive new responsibilities on regulated entities. There is no reason to believe that operation of the proposed rules would impose significant costs on parties to Commission proceedings. To the contrary, we take today's actions with the expectation that overall they will make dealings with the Commission quicker, easier, and less costly for entities of all sizes.

42. Paperwork Reduction Act. This proceeding will not result in any new or modified information collections which would require approval by the Office of Management and Budget (OMB) under the PRA.<sup>122</sup>

### IV. ORDERING CLAUSE

43. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r), that the proposed regulatory changes described above and detailed in Appendix A ARE ADOPTED, effective 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>120</sup> See *supra* note 1.

<sup>121</sup> See 5 U.S.C. §§ 601(2), 603(a).

<sup>122</sup> Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501 *et seq.*).

**APPENDIX A****Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR

parts 0 and 1 as follows:

**PART 0 – COMMISSION ORGANIZATION****1. The authority citation for part 0 continues to read as follows:**

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

**2. Section 0.141 is amended by revising paragraph (h) to read as follows:****§ 0.141 Functions of the Bureau.**

\* \* \* \* \*

(h) Serves as the official FCC records custodian for designated records, including intake processing, organization and file maintenance, reference services, and retirement and retrieval of records; manages the Electronic Comment Filing System and certifies records for adjudicatory and court proceedings. Maintains manual and computerized files that provide for the public inspection of public record materials concerning Broadcast Ownership, AM/FM/TV, TV translators, FM Translators, Cable TV, Wireless, Auction, Common Carrier Tariff matters, International space station files, earth station files, DBS files, and other miscellaneous international files. Also maintains for public inspection Time Brokerage and Affiliation Agreements, court citation files, and legislative histories concerning telecommunications dockets. Provides the public and Commission staff

prompt access to manual and computerized records and filing systems. Periodically reviews the status of open docketed proceedings and, following:

- (1) Consultation with and concurrence from the relevant bureau or office with responsibility for a particular proceeding,
- (2) The issuance of a public notice listing proceedings under consideration for termination, and;
- (3) A reasonable period during which interested parties may comment, closes any docket in which no further action is required or contemplated (with termination constituting a final determination in any such proceeding).

\* \* \* \* \*

**3. Section 0.445 is amended by revising paragraph (a) to read as follows:**

§ 0.445 Publication, availability and use of opinions, orders, policy statements, interpretations, administrative manuals, and staff instructions.

- (a) Adjudicatory opinions and orders of the Commission, or its staff acting on delegated authority, are mailed or delivered by electronic means to the parties, and as part of the record, are available for inspection in accordance with §§ 0.453 and 0.455.

\* \* \* \* \*

**4. Section 0.453 is amended by revising subparagraph (c)(5) to read as follows:**

§ 0.453 Public reference rooms.

\* \* \* \* \*

(c) \* \* \*

(5) All formal and informal carrier-to-carrier complaints against common carriers filed under §1.711 through §1.735 of this chapter, all documents filed in connection therewith, and all communications related thereto;

\* \* \* \* \*

**5. Section 0.459 is amended by revising paragraphs (a) and (f) to read as follows:**

§ 0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.

(a)(1) Procedures applicable to filings in non-electronic proceedings. Any person submitting information or materials to the Commission may submit therewith a request that such information not be made routinely available for public inspection. (If the materials are specifically listed in § 0.457, such a request is unnecessary.) A copy of the request shall be attached to and shall cover all of the materials to which it applies and all copies of those materials. If feasible, the materials to which the request applies shall be physically separated from any materials to which the request does not apply; if this is not feasible, the portion of the materials to which the request applies shall be identified. In the latter circumstance, where confidential treatment is sought only for a portion of a document, the person submitting the document shall submit a redacted version for the public file.

(2) Procedures applicable to filings in electronic proceedings. In proceedings to which the electronic filing requirements set forth in § 1.49(f) of this chapter apply, a party seeking confidential treatment of a portion of a filing must submit in electronic format

either a redacted version of the document or an affidavit that it is impossible to submit a redacted document consistent with the filing requirements of this section. Where a party demonstrates that even the fact of a filing must remain confidential, and that this is consistent with the requirements of this section, this affidavit may be filed in paper format under seal.

\* \* \* \* \*

(f) If no request for confidentiality is submitted, the Commission assumes no obligation to consider the need for non-disclosure but, in the unusual instance, may determine on its own motion that the materials should be withheld from public inspection. See § 0.457(d).

\* \* \* \* \*

**6. Section 0.460 is amended by revising paragraph (e)(1) to read as follows:**

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

\* \* \* \* \*

(e)(1) Written requests for records routinely available for public inspection under §§ 0.453 and 0.455 shall be directed to the Commission's copy contractor pursuant to the procedures set forth in §0.465. Requests shall be captioned "Request For Inspection Of Records," shall be dated, shall list the mailing address, telephone number (if any) of the person making the request, and the e-mail address (if any) and for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document. Written requests shall, in addition, specify the maximum search fee the person making the request is prepared to pay (see §0.467).

\* \* \* \* \*

7. **Section 0.461 is amended by revising subparagraph (d)(3) to read as follows:**

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

\* \* \* \* \*

(d) \* \* \*

(3) If the request is for materials submitted to the Commission by third parties and not open to routine public inspection under §0.457(d), §0.459, or another Commission rule or order, or if a request for confidentiality is pending pursuant to §0.459, or if the custodian of records has reason to believe that the information may contain confidential commercial information, one copy of the request will be provided by the custodian of the records (see §0.461(e)) to the person who originally submitted the materials to the Commission. If there are many persons who originally submitted the records and are entitled to notice under this paragraph, the custodian of records may use a public notice to notify the submitters of the request for inspection. The submitter or submitters will be given ten calendar days to respond to the FOIA request. See § 0.459(d)(1). If a submitter has any objection to disclosure, he or she is required to submit a detailed written statement specifying all grounds for withholding any portion of the information (see §0.459). This response shall be served on the party seeking to inspect the records. The requester may submit a reply within ten calendar days unless a different period is specified by the custodian of records. The reply shall be served on all parties that filed a response. In the event that a submitter fails to respond within the time specified, the submitter will be considered to have no objection to disclosure of the information.

\* \* \* \* \*

**8. Section 0.465 is amended by revising paragraphs (b) and (f) to read as follows:**

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

\* \* \* \* \*

(b)(1) Records routinely available for public inspection under §§ 0.453 and 0.455 are available to the public through the Commission's current copy contractor. Section 0.461 does not apply to such records.

(2) Audio or video recordings or transcripts of Commission proceedings are available to the public through the Commission's current copy contractor. In some cases, only some of these formats may be available.

\* \* \* \* \*

(f) Anyone requesting copies of documents pursuant to this section may either come in person to the Commission (see § 0.460(a)) or request that the copy contractor fulfill the request. If a request goes directly to the contractor, the requester will be charged by the contractor pursuant to the price list set forth in the latest contract.

**9. Section 0.466 is amended by revising paragraph (a)(4) to read as follows:**

§ 0.466 Definitions.

(a) \* \* \*

(4) The term commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial interests of the requester. In determining whether a requester properly falls within this category, the Commission shall determine the use to which a requester will put the documents requested. Where the Commission has reasonable cause to question the use to which a requester will put the documents sought, or where that use is not clear from the request itself, the Commission shall seek additional clarification before assigning the request to a specific category. The dissemination of records by a representative of the news media (see §0.466(a)(7)) shall not be considered to be for a commercial use.

\* \* \* \* \*

**10. Section 0.467 is amended by revising paragraph (a)(2) to read as follows:**

§ 0.467 Search and review fees.

(a) \* \* \*

(2) The fees specified in paragraph (a)(1) of this section are computed at Step 5 of each grade level based on the General Schedule or the hourly rate of non-FCC personnel, including in addition twenty percent for personnel benefits. Search and review fees will be assessed in ¼ hour increments.

\* \* \* \* \*

**11. Section 0.470 is amended by revising paragraph (b)(1) to read as follows:**

§ 0.470 Assessment of fees.

\* \* \* \* \*

(b)(1) The 100 page restriction on assessment of reproduction fees in paragraphs (a)(2) and (a)(3) of this section refers to 100 paper copies of a standard size, which will normally be “8 1/2 x 11” or “11 x 14.”

\* \* \* \* \*

## **PART 1—PRACTICE AND PROCEDURE**

### **12. The authority citation for part 1 is revised to read as follows:**

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

### **13. Section 1.2 is revised to read as follows:**

#### § 1.2 Declaratory rulings.

(a) The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.

(b) The bureau or office to which a petition for declaratory ruling has been submitted or assigned by the Commission should docket such a petition within an existing or current proceeding, depending on whether the issues raised within the petition substantially relate to an existing proceeding. The bureau or office then should seek comment on the petition via public notice. Unless otherwise specified by the bureau or office, the filing deadline for responsive pleadings to a docketed petition for declaratory ruling will be 30 days from the release date of the public notice, and the default filing deadline for any replies will be 15 days thereafter.

**14. Section 1.4 is amended by revising paragraphs (a), (e)(1), and (j), and adding a new subparagraph (l), to read as follows:**

§ 1.4 Computation of time.

(a) Purpose. The purpose of this rule section is to detail 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. In addition, this rule section prescribes the method for computing the amount of time within which the Commission must act in response to deadlines established by statute, a Commission rule, or Commission order.

\* \* \* \* \*

(e) \* \* \*

(1) The term holiday means Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's Headquarters are closed and not reopened prior to 5:30 p.m., or on which a Commission office aside from Headquarters is closed (but, in that situation, the holiday will apply only to filings with that particular office). For example, a regularly scheduled Commission business day may become a holiday with respect to the entire Commission if Headquarters is closed prior to 5:30 p.m. due to adverse weather, emergency or other closing. Additionally, a regularly scheduled Commission business day may become a holiday with respect to a particular Commission office aside from Headquarters if that office is closed prior to 5:30 p.m. due to similar circumstances.

\* \* \* \* \*

(j) Unless otherwise provided (e.g. § 76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document

shall be filed on the next business day. See paragraph (e)(1) of this section. If a rule or order of the Commission specifies that the Commission must act by a certain date and that date falls on a holiday, the Commission action must be taken by the next business day.

\* \* \* \* \*

(l) When Commission action is required by statute to be taken by a date that falls on a holiday, such action may be taken by the next business day (unless the statute provides otherwise).

**15. Section 1.47 is amended by revising paragraph (a) to read as follows:**

**§ 1.47 Service of documents and proof of service.**

(a) Where the Commission or any person is required by statute or by the provisions of this chapter to serve any document upon any person, service shall (in the absence of specific provisions in this chapter to the contrary) be made in accordance with the provisions of this section. Documents that are required to be served by the Commission in agency proceedings (*i.e.*, not in the context of judicial proceedings, Congressional investigations, or other proceedings outside the Commission) may be served in electronic form. In proceedings involving a large number of parties, and unless otherwise provided by statute, the Commission may satisfy its service obligation by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents.

Note to paragraph (a): Section 1.47(a) grants staff the authority to decide upon the appropriate format for electronic notification in a particular proceeding, consistent with any applicable statutory requirements. The Commission expects that service by public notice will be used only in proceedings with 20 or more parties.

\* \* \* \* \*

**16. Section 1.49 is amended by revising paragraph (f) to read as follows:**

§ 1.49 Specifications as to pleadings and documents.

\* \* \* \* \*

(f)(1) In the following types of proceedings, all pleadings, including permissible ex parte submissions, notices of ex parte presentations, comments, reply comments, and petitions for reconsideration and replies thereto, must be filed in electronic format:

- (i) Formal complaint proceedings under Section 208 of the Act and rules in §§ 1.720 through 1.736, and pole attachment complaint proceedings under Section 224 of the Act and rules in §§ 1.1401 through 1.1418;
- (ii) Proceedings, other than rulemaking proceedings, relating to customer proprietary network information (CPNI);
- (iii) Proceedings relating to cable special relief petitions;
- (iv) Proceedings involving Over-the-Air Reception Devices; and
- (v) Common carrier certifications under rule in § 54.314 of this chapter.

(2) Unless required under paragraph (f)(1) of this section, in the following types of proceedings, all pleadings, including permissible ex parte submissions, notices of ex parte presentations, comments, reply comments, and petitions for reconsideration and replies thereto, may be filed in electronic format:

- (i) General rulemaking proceedings other than broadcast allotment proceedings;
- (ii) Notice of inquiry proceedings;
- (iii) Petition for rulemaking proceedings (except broadcast allotment proceedings); and

(iv) Petition for forbearance proceedings.

(3) For purposes of paragraphs (b) and (c) of this section, and any prescribed pleading lengths, the length of any document filed in electronic form shall be equal to the length of the document if printed out and formatted according to the specifications of paragraph (a) of this section, or shall be no more than 250 words per page.

Note: The table of contents and the summary pages shall not be included in complying with any page limitation requirements as set forth by Commission rule.

**17. Section 1.51 is revised to read as follows:**

§ 1.51 Number of copies of pleadings, briefs and other papers.

(a) In hearing proceedings, unless otherwise specified by Commission rules, an original and one copy shall be filed, along with an additional copy for each additional presiding officer at the hearing, if more than one.

(b) In rulemaking proceedings which have not been designated for hearing, see § 1.419.

(c) In matters other than rulemaking and hearing cases, unless otherwise specified by Commission rules, an original and one copy shall be filed. If the matter relates to part 22 of the rules, see § 22.6 of this chapter.

(d) Where statute or regulation provides for service by the Commission of papers filed with the Commission, an additional copy of such papers shall be filed for each person to be served.

(e) The parties to any proceeding may, on notice, be required to file additional copies of any or all filings made in that proceeding.

(f) For application and licensing matters involving the Wireless Radio Services, pleadings, briefs or other documents may be filed electronically in ULS, or if filed manually, one original and one copy of a pleading, brief or other document must be filed.

(g) Participants that file pleadings, briefs or other documents electronically in ULS need only submit one copy, so long as the submission conforms to any procedural or filing requirements established for formal electronic comments. (see § 1.49)

(h) Pleadings, briefs or other documents filed electronically in ULS by a party represented by an attorney shall include the name, street address, and telephone number of at least one attorney of record. Parties not represented by an attorney that file electronically in ULS shall provide their name, street address, and telephone number.

**18. Section 1.106 is amended by revising the section heading and paragraphs**

**(a)(1), (b)(2), (c), (d), (i), and (j), and by adding a new paragraph (p), to read as follows:**

**§ 1.106 Petitions for reconsideration in non-rulemaking proceedings.**

(a)(1) Except as provided in paragraphs (b)(3) and (p) of this section, petitions requesting reconsideration of a final Commission action in non-rulemaking proceedings will be acted on by the Commission. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. (For provisions governing reconsideration of Commission action in notice and comment

rulemaking proceedings, see § 1.429. This § 1.106 does not govern reconsideration of such actions.)

\* \* \* \* \*

(b) \* \* \*

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present:

(i) The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or

(ii) The petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.

\* \* \* \* \*

(c) In the case of any order other than an order denying an application for review, a petition for reconsideration which relies on facts or arguments not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts or arguments fall within one or more of the categories set forth in § 1.106(b)(2); or

(2) The Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.

(d)(1) A petition for reconsideration shall state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed. The petition shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests.

(2) A petition for reconsideration of a decision that sets forth formal findings of fact and conclusions of law shall also cite the findings and/or conclusions which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and/or conclusions should be changed. The petition may request that additional findings of fact and/or conclusions of law be made.

\* \* \* \* \*

(i) Petitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52 and shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C., 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System or other electronic filing system (such as ULS). Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed. Parties filing in electronic form need only submit one copy.

(j) The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Where the petition for reconsideration

relates to an instrument of authorization granted without hearing, the Commission or designated authority will take such action within 90 days after the petition is filed.

\* \* \* \* \*

(p) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

(1) Fail to identify any material error, omission, or reason warranting reconsideration;

(2) Rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of subsections (b)(2), (b)(3), or (c) of this subsection;

(3) Rely on arguments that have been fully considered and rejected by the Commission within the same proceeding;

(4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (d) of this section;

(5) Relate to matters outside the scope of the order for which reconsideration is sought;

(6) Omit information required by these rules to be included with a petition for reconsideration, such as the affidavit required by paragraph (e) of this section (relating to electrical interference);

(7) Fail to comply with the procedural requirements set forth in paragraphs (f) and (i) of this section;

(8) relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under paragraph (c) of this section;

or

(9) Are untimely.

**19. Section 1.108 is revised to read as follows:**§ 1.108 Reconsideration on Commission's own motion.

The Commission may, on its own motion, reconsider any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in §1.4(b). When acting on its own motion under this section, the Commission may take any action it could take in acting on a petition for reconsideration, as set forth in § 1.106(k).

**20. Section 1.419 is amended by revising paragraph (b) to read as follows:**§ 1.419 Form of comments and replies; number of copies.

\* \* \* \* \*

(b) Unless otherwise specified by Commission rules, an original and one copy of all comments, briefs and other documents filed in a rulemaking proceeding shall be furnished to the Commission. The distribution of such copies shall be as follows:

Secretary (original)	1
Reference Information Center	1
Total	2

Participants filing the required 2 copies who also wish each Commissioner to have a personal copy of the comments may file an additional 5 copies. The distribution of such copies shall be as follows:

Commissioners	5
Secretary (original)	1

Reference Information Center	1
Total	7

Similarly, members of the general public who wish to express their interest by participating informally in a rulemaking proceeding may do so by submitting an original and one copy of their comments, without regard to form, provided only that the Docket Number is specified in the heading. Informal comments filed after close of the reply comment period, or, if on reconsideration, the reconsideration reply comment period, should be labeled “ex parte” pursuant to § [1.1206\(a\)](#). Letters submitted to Commissioners or Commission staff will be treated in the same way as informal comments, as set forth above. Also, to the extent that an informal participant wishes to submit to each Commissioner a personal copy of a comment and has not submitted or cannot submit the comment by electronic mail, the participant may file an additional 5 copies. The distribution of such copies shall be as follows:

Commissioners	5
Secretary (original)	1
Reference Information Center	1
Total	7

\* \* \* \* \*

**21. Section 1.427 is amended by revising paragraph (a) to read as follows:**

§ 1.427 Effective date of rules.

(a) Any rule issued by the Commission will be made effective not less than 30 days from the time it is published in the Federal Register except as otherwise specified in paragraphs (b) and (c) of this section. If the report and order adopting the rule does not specify the date on which the rule becomes effective, the effective date shall be 30 days after the date on which the rule is published in the Federal Register, unless a later date is required by statute or is otherwise specified by the Commission.

\* \* \* \* \*

**22. Section 1.429 is amended by revising the section heading and paragraphs (b), (h), and (i), and by adding a new paragraph (l), to read as follows:**

§ 1.429 Petition for reconsideration of final orders in rulemaking proceedings.

\* \* \* \* \*

(b) A petition for reconsideration which relies on facts or arguments which have not previously been presented to the Commission will be granted only under the following circumstances:

- (1) The facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;
- (2) The facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts or arguments relied on is required in the public interest.

\* \* \* \* \*

(h) Petitions for reconsideration, oppositions and replies shall conform to the requirements of §§ 1.49 and 1.52, except that they need not be verified. Except as provided in § 1.420(e), an original and 11 copies shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System. Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed. Parties filing in electronic form need only submit one copy.

(i) The Commission may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Any order addressing a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstance, a second petition for reconsideration may be dismissed by the staff as repetitious. In no event shall a ruling which denies a petition for reconsideration be considered a modification of the original order.

\* \* \* \* \*

(l) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

- (1) Fail to identify any material error, omission, or reason warranting reconsideration;
  - (2) Rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of paragraphs (b)(1) through (b)(3) of this section;
  - (3) Rely on arguments that have been fully considered and rejected by the Commission within the same proceeding;
  - (4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (c) of this section;
  - (5) Relate to matters outside the scope of the order for which reconsideration is sought;
  - (6) Omit information required by these rules to be included with a petition for reconsideration;
  - (7) Fail to comply with the procedural requirements set forth in paragraphs (d), (e), and (h) of this section;
  - (8) Relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under paragraph (b) of this section;
- or
- (9) Are untimely.

**23. Section 1.1164 is amended by revising paragraph (c) to read as follows:**

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

\* \* \* \* \*

(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the

delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

\* \* \* \* \*

**24. Section 1.1912 is amended by revising paragraph (b)(4)(ii) to read as follows:**

§ 1.1912 Collection by administrative offset.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) The Commission may omit the procedures set forth in paragraph

(b)(4)(i) of this section when:

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, the Commission first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for

review. When prior notice and an opportunity for review are omitted, the Commission shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

\* \* \* \* \*

**APPENDIX B****List of Commenters****NPRM Comments**

<b>Commenter</b>	<b>Abbreviation</b>
American Cable Association	ACA
AT&T Inc.	AT&T
Pierre de Vries	de Vries
Law Offices of Susan Bahr, PC	Bahr
Media Access Project	MAP
Qwest Corporation	Qwest
Sprint Nextel Corporation	Sprint
TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network	TCR
Verizon and Verizon Wireless	Verizon

**NPRM Reply Comments**

<b>Reply Commenter</b>	<b>Abbreviation</b>
AT&T Inc.	AT&T
Federal Communications Bar Association Access to Records Committee	FCBA Committee
Law Offices of Susan Bahr, PC	Bahr
National Association of Broadcasters	NAB
National Association of State Utility Consumer Advocates	NASUCA