

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

In the Matter of)
)
Amendment of Parts 0 and 1 of the Commission's) GN 21-16
Rules regarding Delegations of Authority to Act on)
Applications for Review)

ORDER

Adopted: January 13, 2021

Released: January 14, 2021

By the Commission:

1. By this Order, we amend Parts 0 and 1 of the Commission's rules to codify a uniformly applicable standard for the exercise of delegated authority by various Bureaus and Offices to dismiss Applications for Review that do not comply with the procedural requirements of Sections 1.115(a), (b), (d) or (f) of our rules.1 Our current rules delegating authority to the various Bureaus and Offices are inconsistent on this issue. The rules delegating authority to certain Bureaus and Offices provide them with authority to dismiss procedurally defective Applications for Review.2 The rules delegating authority to the other Bureaus and Offices do not expressly provide this authority.3

1 47 CFR § 1.115(a) (providing that a person filing an application for review who has not previously participated in the proceeding shall include a statement describing the manner in which he is aggrieved by the action taken and showing good reason why it was not possible for him to participate in the earlier stages of the proceeding); 47 CFR § 1.115(b) (providing that applications for review shall concisely and plainly state the questions presented for review; shall specify with particularity the factor(s) which warrant Commission consideration of the questions presented; shall state with particularity how the action taken by the designated authority should be changed; and shall state the form of relief sought); 47 CFR § 1.115(d) (providing that, with certain exceptions, an application for review and any supplemental thereto shall be filed within 30 days of public notice of the staff's action); 47 CFR § 1.115(f) (providing that applications for review shall conform to the requirements of §§ 1.49, 1.51, and 1.52; shall be submitted to the Secretary; shall not exceed 25 double-space typewritten pages; shall be served upon the parties to the proceeding).

2 See 47 CFR § 0.271(c) ("The Chief, Office of Economics and Analytics, shall not have authority to act on any applications for review of actions taken by the Chief, Office of Economics and Analytics pursuant to delegated authority, except that the Chief may dismiss any such application that does not comply with the filing requirements of § 1.115(d) and (f) of this chapter."); 47 CFR § 0.331(c) ("The Chief, Wireless Telecommunications Bureau shall not have authority to act upon any applications for review of actions taken by the Chief, Wireless Telecommunications Bureau pursuant to any delegated authority, except that the Chief may dismiss any such application that does not comply with the filing requirements of § 1.115 (d) and (f) of this chapter."). See also 47 CFR § 0.261(b)(3) ("[T]he Chief, International Bureau, shall not have authority . . . (3) To act upon any application for review of actions taken by the Chief, International Bureau, pursuant to delegated authority, which application complies with § 1.115 of this chapter . . .").

3 47 CFR § 0.212(b)(3) ("The Board of Commissioners is authorized to act upon all matters normally acted upon by the Commission en banc, except the following: . . . (3) Applications for review of actions taken pursuant to delegated authority."); 47 CFR § 0.241(a)(2) ("The performance of functions and activities described in § 0.31 is delegated to the Chief of the Office of Engineering and Technology: Provided, that the following matters shall be referred to the Commission en banc for disposition: . . . (2) Petitions for review of actions taken to delegated authority. See § 1.115 of this chapter."); 47 CFR § 0.283(b) ("The Chief, Media Bureau, is delegated authority to

(continued....)

2. To remove this inconsistency, we hereby amend our rules to delegate authority to various Bureaus and Offices to dismiss any Application for Review that does not contain any statement required under 47 CFR § 1.115(a) or 47 CFR § 1.115(b),⁴ or does not comply with the filing requirements of 47 CFR § 1.115(d) or 47 CFR § 1.115(f). We conclude that this action will eliminate confusion on this issue for the benefit of parties seeking Commission review of staff actions and parties opposing such challenges. In addition, this action will aid in the expeditious dismissal of procedurally defective Applications for Review. These amendments to the rules will apply to all Applications for Review filed on or after the effective date of the amendments set forth below.

3. We also take this opportunity to correct a typographical error in the rules describing the functions of the Wireline Competition Bureau. As codified, those rules specify that one of the functions of the Wireline Competition Bureau is to “[c]arry out the functions of the Commission under the Communications Act of 1934, as amended, except as reserved to the Commission under §0.331.”⁵ The reference to Section 0.331 is an error, as that is the provision of our rules that delegates authority to the Wireless Telecommunications Bureau. Instead the limitation should refer to Section 0.291 of our rules, which delegates authority to the Wireline Competition Bureau.

4. We hereby amend our rules to correct that typographical error. We conclude that this action will eliminate confusion on this issue for the benefit of parties seeking to determine the scope of authority delegated to the Wireline Competition Bureau.

5. Finally, we make a minor correction to Section 0.392(j) of the delegated authority rules for the Public Safety and Homeland Security Bureau, which states that the chief of that bureau has authority to administer the 911 communications reliability and redundancy rules and policies “contained in part 12 of this chapter.”⁶ The reference to part 12 is no longer correct because in 2019, the Commission moved the part 12 rules to part 9 as part of its general consolidation of 911 rules in the *Kari’s Law/RAY BAUM’S Act* proceeding.⁷ Therefore, we amend Section 0.392(j) to replace the references to “part 12” with “part 9.”

perform all functions of the Bureau, described in § 0.61, provided that the following matters shall be referred to the Commission en banc for disposition: . . . (b) Application for review of actions taken pursuant to delegated authority.”); 47 CFR § 0.291(d) (“The Chief, Wireline Competition Bureau shall not have authority to act upon any applications for review of actions taken by the Chief, Wireline Competition Bureau, pursuant to any delegated authority.”); 47 CFR § 0.311(a)(2) (“The Chief, Enforcement Bureau, is delegated authority to perform all functions of the Bureau, described in § 0.111, provided that: (a) The following matters shall be referred to the Commission en banc for disposition: . . . (2) Applications for review of actions taken pursuant to delegated authority.”); 47 CFR § 0.361(b) (“The Chief, Consumer and Governmental Affairs Bureau, is delegated authority to perform all functions of the Bureau, described in § 0.141, provided that the following matters shall be referred to the Commission en banc for disposition: . . . (b) Application for review of actions taken pursuant to delegated authority.”); 47 CFR § 0.392(b) (“The Public Safety and Homeland Security Bureau shall not have authority to act upon any applications for review of actions taken by the Chief, Public Safety and Homeland Security Bureau, pursuant to any delegated authority.”).

⁴ The Bureaus’ authority extends to those applications where such statements are missing entirely.

⁵ 47 CFR § 0.91(m).

⁶ 47 CFR § 0.392(j).

⁷ *Implementing Kari’s Law and Section 506 of RAY BAUM’S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission’s Rules*, PS Docket Nos. 18-261 and 17-239, GN Docket No. 11-117, Report and Order, 34 FCC Rcd 6607, 6698-6702 (2019). The former part 12 rules are now contained in part 9, subpart H (47 CFR §§ 9.19-9.20).

6. *No Notice and Comment Required.* We have determined that the changes we adopt here are rules of agency organization, procedure, or practice, and are therefore exempt from the notice and comment requirements of the Administrative Procedure Act.⁸

7. *Regulatory Flexibility Act, Paperwork Reduction Act, and Congressional Review Act.* Section 603 of the Regulatory Flexibility Act, as amended, requires a regulatory flexibility analysis in notice and comment rulemaking proceedings.⁹ As we are adopting these rules without notice and comment, no regulatory flexibility analysis is required. This document does not contain any new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.¹⁰ In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.¹¹ The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not “substantially affect the rights or obligations of non-agency parties.”¹²

8. Accordingly, IT IS ORDERED that pursuant to Sections 4(i), 4(j), and 155 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 155, and Section 0.201(d) of the Commission’s rules, 47 CFR § 0.201(d), this ORDER is hereby ADOPTED and the rules set forth in the Appendix are hereby AMENDED effective 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸ 5 U.S.C. § 553(b)(A) (notice requirements inapplicable to “interpretive rules, general statements of policy, or rules of agency organization, procedure or practice”).

⁹ 5 U.S.C. § 603(a).

¹⁰ 44 U.S.C. §§ 3501-3520.

¹¹ *See* 44 U.S.C. § 3506(c)(4).

¹² 5 U.S.C. § 804(3)(C) (rules subject to the Congressional Review Act do not include “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties”).

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: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

2. Amend § 0.91 by revising paragraph (m) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(m) Carry out the functions of the Commission under the Communications Act of 1934, as amended, except as reserved to the Commission under § 0.291.

* * * * *

3. Amend § 0.212 by revising paragraph (b)(3) to read as follows:

§ 0.212 Board of Commissioners.

* * * * *

(b) * * *

(3) Applications for review of actions taken pursuant to delegated authority, except that the Board may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

4. Amend § 0.241 by revising paragraphs (a) introductory text and (a)(2) to read as follows:

§ 0.241 Authority delegated.

(a) The performance of functions and activities described in § 0.31 is delegated to the Chief of the Office of Engineering and Technology: Provided that the following matters shall be referred to the Commission en banc for disposition:

* * * * *

(2) Applications for review of actions taken pursuant to delegated authority, except that the Chief of the Office of Engineering and Technology may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

5. Amend § 0.261 by revising paragraph (b)(3) to read as follows:

§ 0.261 Authority delegated.

* * * * *

(b) * * *

(3) To act upon any application for review of actions taken by the Chief, International Bureau, pursuant to delegated authority, except that the Chief of the International Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter;

* * * * *

6. Amend § 0.271 by revising paragraph (c) to read as follows:

§ 0.271 Authority delegated.

* * * * *

(c) The Chief, Office of Economics and Analytics, shall not have authority to act on any applications for review of actions taken by the Chief of the Office of Economics and Analytics pursuant to delegated authority, except that the Chief may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

7. Amend § 0.283 by revising paragraph (b) to read as follows:

§ 0.283 Authority delegated.

* * * * *

(b) Application for review of actions taken pursuant to delegated authority, except that the Chief of the Media Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

8. Amend § 0.291 by revising paragraph (d) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(d) *Authority concerning applications for review.* The Chief, Wireline Competition Bureau, shall not have

authority to act upon any applications for review of actions taken by the Chief, Wireline Competition Bureau, pursuant to any delegated authority, except that the Chief of the Wireline Competition Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

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9. Amend § 0.311 by revising paragraph (a)(2) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(a) * * *

(2) Applications for review of actions taken pursuant to delegated authority, except that the Chief of the Enforcement Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

10. Amend § 0.331 by revising paragraph (c) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(c) *Authority concerning applications for review.* The Chief, Wireless Telecommunications Bureau, shall not have authority to act upon any applications for review of actions taken by the Chief of the Wireless Telecommunications Bureau pursuant to any delegated authority, except that the Chief may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115 (d) or (f) of this chapter.

* * * * *

11. Amend § 0.361 by revising paragraph (b) to read as follows:

§ 0.361 Authority delegated.

* * * * *

(b) Application for review of actions taken pursuant to delegated authority, except that the Chief of Consumer and Governmental Affairs Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

12. Amend § 0.392 by revising paragraphs (b) and (j) to read as follows:

§ 0.392 Authority delegated.

* * * * *

(b) The Public Safety and Homeland Security Bureau shall not have authority to act upon any applications for review of actions taken by the Chief, Public Safety and Homeland Security Bureau, pursuant to any delegated authority, except that the Chief of the Public Safety and Homeland Security Bureau may dismiss any such application that does not contain any statement required under § 1.115(a) or (b) of this chapter, or does not comply with the filing requirements of § 1.115(d) or (f) of this chapter.

* * * * *

(j) The Chief of the Public Safety and Homeland Security Bureau is delegated authority to administer the communications reliability and redundancy rules and policies contained in part 9, subpart H, of this chapter, develop and revise forms and procedures as may be required for the administration of part 9, subpart H, of this chapter, review certifications filed in connection therewith, and order remedial action on a case-by-case basis to ensure the reliability of 911 service in accordance with such rules and policies.

PART 1 — PRACTICE AND PROCEDURE

13. The authority citation for part 1 is revised to read as follows:

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

14. Amend § 1.104 by:

- a. Revising paragraph (b); and
- b. Removing the note following paragraph (d) and the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 1.104 Preserving the right of review; deferred consideration of application for review.

* * * * *

(b) Any person desiring Commission consideration of a final action taken pursuant to delegated authority shall file either a petition for reconsideration or an application for review (but not both) within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b). The petition for reconsideration will be acted on by the designated authority or referred by such authority to the Commission: Provided that a petition for reconsideration of an order designating a matter for hearing will in all cases be referred to the Commission. The application for review will be acted upon by the Commission, except in those cases where a Bureau or Office has been delegated authority to dismiss an application for review.

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