

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 0.241 is amended by adding new paragraph (f) to read as follows:

§ 0.241 Authority delegated.

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(f) The Chief, Office of Engineering and Technology (OET) is authorized to select, in appropriate cases on his/her own initiative or upon request by a pioneer's preference applicant or other interested person, a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. In consultation with the General Counsel, the Chief, OET, shall also impose other conflict-of-interest requirements that are necessary in the interest of attaining impartial, expert advice regarding the particular pioneer's preference request or requests.

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.402 is amended by revising the first sentence of paragraph (a); removing paragraph (b); redesignating paragraphs (c), (e), (f), and (h) as new paragraphs (b), (d), (e), and (j) respectively; redesignating paragraphs (d) and (g) as new paragraphs (c) and (f), respectively, and revising them; and adding new paragraphs (g), (h), (i), and (k) to read as follows:

§ 1.402 Pioneer's preference.

(a) When filing a petition for rule making pursuant to § 1.401 that seeks an allocation of spectrum for a new service or that, by use of innovative technology in a new spectrum allocation, will substantially enhance an existing service, the petitioner may also submit a separate request that it be awarded a pioneer's preference in the licensing process for the service. * * *

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(c) Pioneer's preference requests complying with the requirements and procedures in paragraphs (a) and (b) of this section will be accepted for filing and listed by file number in a notice of proposed rule making addressing the new service or technology proposed in the request, if such a notice of proposed rulemaking is adopted. A final determination on a request for pioneer's preference and its scope will normally be made in a report and order adopting new rules for the service or technology proposed in the request, if such rules are adopted. If awarded, the pioneer's preference will provide that the preference applicant's application for a construction permit or license will not be subject to mutually exclusive applications. If granted, the construction permit or license will be subject to the conditions in paragraphs (e) and (f) of this section.

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(f) In services in which licenses are assigned by competitive bidding, any parties receiving pioneer's preferences will be required to pay for their licenses in accord with the payment formula specified in the General Agreement on Tariffs and Trade legislation, Pub. L. 103-465. This formula requires that pioneers pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. Comparable licenses will be determined by the Commission on a case-by-case basis. For licenses issued on or after August 1, 1994, the Commission shall recover for the public a portion of the value of the public spectrum resource made available to a pioneer's preference recipient by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

(1) Identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical characteristics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

(2) Dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

(3) Computing the average of the per capita bid amounts for the licenses identified under paragraph (f)(1) of this section;

(4) Reducing such average amount by 15 percent; and

(5) Multiplying the amount determined under paragraph (f)(4) of this section by the population of the service area of the license obtained by such person.

(g) In services in which licenses are awarded by competitive bidding, a pioneer that qualifies as a designated entity will be eligible for installment payments under the same terms and conditions as other designated entities in that service, except that in all services the pioneer's payments must be completed within a five year period that will begin 30 days after the auction for comparable licenses has concluded or 30 days after the pioneer's license grant becomes final, whichever is later. A pioneer, like other applicants, will be required in its license application to certify and make the requisite demonstration that it is eligible for installments. Pioneers that are not eligible for installment payments must make the 85 percent payment specified in § 1.402(f) within 30 days after the auction for comparable licenses has concluded or within 30 days after the license grant become final, whichever is later.

(h) An opportunity for review and verification of pioneer's preference requests by experts who are not Commission employees will be provided by the Commission. The Chief, Office of Engineering and Technology (OET) may select a panel of experts consisting of persons who are knowledgeable about these specific technology set forth in a pioneer's preference request and who are neither employed by the Commission nor by any applicant seeking a pioneer's preference in the same or similar communications service. The panel of experts will generally be granted a period of up to 90 days, but no more than 180 days, to present their findings to the Commission. The Commission will generally establish, conduct, and seek the consensus of the panel pursuant to the Federal Advisory Committee Act, and will evaluate its recommendations in light of all the submissions and comments in the record. Panelists will have the authority to seek further information pertaining to preference requests and to perform field evaluations, as deemed appropriate by the Chief, OET.

(i) In order to qualify for a pioneer's preference in services in which licenses are awarded by competitive bidding, an applicant must demonstrate that the Commission's public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. The applicant must