

an automatic stay upon the filing of a petition for reconsideration of any Commission order modifying an authorization to specify operation on a different channel. The purpose of the proposed amendment is to remove any incentive to challenge an agency order simply to delay institution of expanded service by a competitor, and to expedite provision of improved service to the public.

**DATES:** Comments are due by August 28, 1995, and reply comments are due by September 12, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews (202-739-0774), Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making (NPRM) in MM Docket No. 95-110, adopted July 10, 1995, and released July 21, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Synopsis of Notice of Proposed Rule Making

1. With this Notice of Proposed Rule Making (NPRM), the Commission proposes to delete that portion of Section 1.420(f) of its rules, 47 CFR 1.420(f), which provides for an automatic stay, upon the filing of a petition for reconsideration, of any Commission order modifying an authorization to specify operation on a different channel. The purpose of the proposed amendment is to remove an apparent incentive for the filing of petitions for reconsideration that are largely without merit and to expedite provision of expanded service to the public.

2. Section 1.420(f) provides, in pertinent part:

\* \* \* The filing of a petition for reconsideration of an order modifying an authorization to specify operation on a different channel shall stay the effect of a change in the rules pending action of the petition.

3. Although Section 1.420(f) refers only to petitions for reconsideration, the Commission staff has also applied the automatic stay to orders challenged by

applications for review.<sup>1</sup> Our proposal to delete the automatic stay provision for petitions for reconsideration would also eliminate automatic stays in the context of applications for review.

4. The automatic stay was adopted by the Commission in 1975 as part of a provision that requires service of petitions for reconsideration in proceedings for amendment of the FM and TV Tables of Allotments on any licensee or permittee whose authorized frequency could be changed. Thus, it is apparent that the automatic stay was intended to help ensure that affected parties have the opportunity to comment before proposed modifications to their authorizations become effective.

5. Our intent in proposing to delete the automatic stay provision is to discourage parties from filing meritless petitions for reconsideration or applications for review that can substantially delay implementation of improved broadcast service. It is our experience that parties increasingly are filing challenges to approvals of their competitor's proposals to improve service, thereby triggering the automatic stay. Only a very small percentage of these petitions or applications for review are ultimately successful. Because the stay prohibits licensees from constructing modified facilities authorized by the Commission until final resolution of any outstanding reconsideration or application for review,<sup>2</sup> or until the stay is lifted, the stay provides an incentive for parties to challenge agency approval of a competitor's modification proposal simply to forestall institution of new competitive service. These petitions cause unjustifiable expense for parties and absorb valuable staff resources.

6. Elimination of the automatic stay would facilitate implementation of improved service to licensee communities, thereby promoting more efficient use of broadcast spectrum and resulting in significant public interest benefits. Because Section 1.420(f) will continue to require that petitions for reconsideration be served on any licensee or permittee whose authorization could be modified, the rights of these interested parties to be affirmatively informed of actions potentially affecting their interests will continue to be protected.

7. Elimination of the automatic stay, while allowing licensees to commence construction and operation of their modified facilities, would not prejudice final resolution of any challenges to the

initial staff decision. Licensees who proceed, where feasible, to construct and operate new facilities in instances in which a petition for reconsideration or application for review is pending bear the risk of an adverse final decision, and must take whatever steps are necessary to comply with the final order. Moreover, the Commission retains the authority to impose a stay in individual cases where circumstances warrant.<sup>3</sup>

8. We propose both to eliminate the automatic stay in prospective cases, and to lift the stay with respect to any petitions for reconsideration or applications for review pending as of the effective date of the Report and Order in this proceeding. We believe that lifting the stay in pending cases will further our objective of expediting provision of improved service to the public. We invite comment on this second aspect of our proposal in particular, as well as on our general proposal to eliminate the automatic stay.

### Administrative Matters

9. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 28, 1995 and reply comments on or before September 12, 1995. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

10. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See 47 CFR 1.1202, 1.1203, and 1.1206(a).

### Initial Regulatory Flexibility Analysis

11. Reason for Action: This proceeding was initiated to improve Commission procedures governing proposals to amend the FM and TV Tables of Allotments.

<sup>1</sup> See *Arlington TX*, 6 FCC Rcd 2050, 2051 n. 2 (1991).

<sup>2</sup> See, e.g., *Arlington TX*, *supra* n. 1.

<sup>3</sup> See 47 CFR 1.102(b), 1.106(n), and 1.115(h).