pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to *bona fide* merger agreements;

(ii) The exact nature and amount of any consideration received or promised;

(iii) An itemized accounting of the expenses for which it seeks

reimbursement; and

(iv) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(2) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(ii) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(3) For the purposes of this section:

(i) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(ii) Applications, petitions to deny, informal objections and other pleadings are deemed to be pending before the FCC from the time the application or petition to deny is filed with the FCC until such time as an order of the FCC granting, denying or dismissing the application, petition to deny, informal objection or other pleading is no longer subject to reconsideration by the FCC or to review by any court.

(iii) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(iv) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(v) Reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the FCC.

§26.320 Opposition to applications.

(a) Petitions to deny (including petitions for other forms or relief) and responsive pleadings for Commission consideration must comply with § 1.2108 of this chapter and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions \$\$1.41 through 1.52 of this chapter except where otherwise provided in \$1.2108 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

§26.321 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of GWCS service are subject to competitive bidding in accordance with the procedures in Subpart F of this part and in Part 1, Subpart Q of this chapter.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

§26.322 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also § 1.2108 of this chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 26.321 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 26.320, the Commission will deny the petition by the issuance of a Memorandum Opinion