

Federal Communications Commission

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supplements to Statements where significant new circumstances occur or information arises relevant to environmental concerns and bearing upon the application.

(f) The Application, the EA, the DEIS, and the FEIS and all related documents, including the comments filed by the public and any agency, shall be part of the administrative record and will be routinely available for public inspection.

(g) If EISs are to be prepared, the applicant must provide the community with notice of the availability of environmental documents and the scheduling of any Commission hearings in that action.

(h) The timing of agency action with respect to applications subject to EISs is set forth in 40 CFR 1506.10. No decision shall be made until ninety (90) days after the Notice of Availability of the Draft Environmental Impact Statement is published in the Federal Register, and thirty (30) days after the Notice of Availability of the Final Environmental Impact Statement is published in the FEDERAL REGISTER, which time period may run concurrently. *See* 40 CFR 1506.10(c); *see also* §§ 1.1315(b) and 1.1317(b).

(i) Guidance concerning preparation of the Draft and Final Environmental Statements is set out in 40 CFR part 1502.

[51 FR 15000, Apr. 22, 1986, as amended at 53 FR 28394, July 28, 1988]

§ 1.1315 The Draft Environmental Impact Statement (DEIS); Comments.

(a) The DEIS shall include:

(1) A concise description of the proposal, the nature of the area affected, its uses, and any specific feature of the area that has special environmental significance;

(2) An analysis of the proposal, and reasonable alternatives exploring the important consequent advantages and/or disadvantages of the action and indicating the direct and indirect effects and their significance in terms of the short and long-term uses of the human environment.

(b) When a DEIS and supplements, if any, are prepared, the Commission shall send five copies of the Statement, or a summary, to the Office of Federal

Activities, Environmental Protection Agency. Additional copies, or summaries, will be sent to the appropriate regional office of the Environmental Protection Agency. Public Notice of the availability of the DEIS will be published in the FEDERAL REGISTER by the Environmental Protection Agency.

(c) When copies or summaries of the DEIS are sent to the Environmental Protection Agency, the copies or summaries will be mailed with a request for comment to Federal agencies having jurisdiction by law or special expertise, to the Council on Environmental Quality, to the applicant, to individuals, groups and state and local agencies known to have an interest in the environmental consequences of a grant, and to any other person who has requested a copy.

(d) Any person or agency may comment on the DEIS and the environmental effect of the proposal described therein within 45 days after notice of the availability of the statement is published in the FEDERAL REGISTER. A copy of those comments shall be mailed to the applicant by the person who files them pursuant to 47 CFR 1.47. An original and one copy shall be filed with the Commission. If a person submitting comments is especially qualified in any way to comment on the environmental impact of the facilities, a statement of his or her qualifications shall be set out in the comments. In addition, comments submitted by an agency shall identify the person(s) who prepared them.

(e) The applicant may file reply comments within 15 days after the time for filing comments has expired. Reply comments shall be filed with the Commission in the same manner as comments, and shall be served by the applicant on persons or agencies which filed comments.

(f) The preparation of a DEIS and the request for comments shall not open the application to attack on other grounds.

§ 1.1317 The Final Environmental Impact Statement (FEIS).

(a) After receipt of comments and reply comments, the Bureau will prepare a FEIS, which shall include a

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summary of the comments, and a response to the comments, and an analysis of the proposal in terms of its environmental consequences, and any reasonable alternatives, and recommendations, if any, and shall cite the Commission's internal appeal procedures (See 47 CFR 1.101–1.120).

(b) The FEIS and any supplements will be distributed and published in the same manner as specified in § 1.1315. Copies of the comments and reply comments, or summaries thereof where the record is voluminous, shall be attached to the FEIS.

§ 1.1319 Consideration of the environmental impact statements.

(a) If the action is subject to a hearing:

(1) In rendering his initial decision, the Administrative Law Judge shall utilize the FEIS in considering the environmental issues, together with all other non-environmental issues. In a comparative context, the respective parties shall be afforded the opportunity to comment on the FEIS, and the Administrative Law Judge's decision shall contain an evaluation of the respective applications based on environmental and non-environmental public interest factors.

(2) Upon review of an initial decision, the Commission will consider and assess all aspects of the FEIS and will render its decision, giving due consideration to the environmental and non-environmental issues.

(b) In all non-hearing matters, the Commission, as part of its decision-making process, will review the FEIS, along with other relevant issues, to ensure that the environmental effects are specifically assessed and given comprehensive consideration.

[51 FR 15000, Apr. 22, 1986, as amended at 62 FR 4171, Jan. 29, 1997]

Subpart J—Pole Attachment Complaint Procedures

SOURCE: 43 FR 36094, Aug. 15, 1978, unless otherwise noted.

§ 1.1401 Purpose.

The rules and regulations contained in subpart J of this part provide com-

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plaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms, and conditions that are just and reasonable.

[61 FR 45618, Aug. 29, 1996]

§ 1.1402 Definitions.

(a) The term *utility* means any person that is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person that is cooperatively organized, or any person owned by the Federal Government or any State.

(b) The term *pole attachment* means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(c) With respect to poles, the term *usable space* means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the utility. With respect to conduit, the term *usable space* means capacity within a conduit system which is available, or which could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications or cable services, and which includes capacity occupied by the utility.

(d) The term *complaint* means a filing by a cable television system operator, a cable television system association, a utility, an association of utilities, a telecommunications carrier, or an association of telecommunications carriers alleging that it has been denied access to a utility pole, duct, conduit, or right-of-way in violation of this subpart and/or that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term *complainant* means a cable television system operator, a cable television system association, a utility, an association of utilities, a