ORIGINAL

FCC MAIL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 19 8 14 AM '90

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In the Matter of	)	RECEIVED BY
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Amendment of Parts 21, 22, 73, 74, and 90 of the Commission's Rules Pertaining to Representation of Antenna Site Availability	)	RM-_____

JAN 19 1990

Federal Communications Commission
Office of the Secretary

PETITION FOR RULE MAKING

Teletech, Inc. ("Teletech"), by its President and Chief Executive Officer, in accordance with Section 1.401(a) of the Commission's Rules, hereby files this Petition for Rule Making proposing amendment of Parts 21, 22, 73, 74, and 90 of the Commission's Rules pertaining to representation of antenna site availability. Proposed rules are shown at Appendix A, attached hereto. In support of this proposal, Teletech respectfully shows the following:

1. Presently, certain applicants for radio facilities regulated under Parts 21, 22, 73, or 74 of the Commission's Rules[1] are required to certify as part of the application procedure that the applicant has obtained reasonable assurance of the availability

[1] There is no present requirement to certify to or submit evidence of antenna site availability under Part 90 of the Commission's Rules.

of the antenna site shown in the application for the applicant's intended radio operation.

2. Although the Commission has long held that an applicant need not have a binding agreement or absolute assurance of the availability of a proposed transmitter site, the applicant must be able to show that it has obtained reasonable assurance that the proposed site is available to it. The Commission's requirements will be satisfied where an applicant has contacted the property owner or the owner's representative and has obtained reasonable assurance, in good faith, that the proposed site will be available for the intended purpose.[2]

3. Unfortunately, and as always will be the case, some applicants will bend and distort the Commission's Rules to their limits in justifying actions which may be or are clearly contrary to the spirit and intent of the Rules. Clearly, the purpose of requiring an applicant to obtain reasonable assurance of the availability of a proposed antenna site is to avoid the filing of an otherwise defective application, which later must be amended, hence delaying the implementation of service to the public. Such situations not only delay implementation of service to the public, but also clog the Commission's limited resources.

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[2] See, for example, FCC Form 301 Instructions, at page 9, Section VII(B).

4. In recent years, the Commission has had a new twist added in the form of "speculator" applications. It seems as if it were only yesterday when the Commission received thousands of cellular applications being filed by parties who merely were hoping to cash in on a "cellular bonanza" by being the applicant selected at random lottery. A review of hundreds of those cellular applications revealed that a high percentage, and certainly the majority, were defective at the time of filing because of the lack of the reasonable assurance of the antenna site(s) proposed in the application.

5. Similar problems have been seen in many other of the Commission's radio services regulated under Parts 21, 22, 73, 74, and 90 of the Commission's Rules, where applications have been quickly slapped together, and although totally correct from a legal and engineering standpoint, in error with regard to the focal point of the application --- the antenna site --- because the antenna site is not and was not available for use by the applicant.

6. Applicants specifying antenna sites for which they have no reasonable assurance of availability are also clogging the Commission's limited comparative hearing resources, as well. Additionally, dozens upon dozens of petitions to deny must be processed by the Commission which have been submitted by other competing applicants who point out the absence of reasonable assurance of the availability of an antenna site by an applicant.

7. Teletech, which is engaged, inter alia, in the management and operation of dozens of antenna sites, repeatedly sees applications appear upon public notice before the Commission specifying a Teletech-controlled antenna site where the applicant has never made contact with Teletech, let alone ever attempted to obtain reasonable assurance of antenna site availability. Indeed, many of these "non-bona fide" applicants have even listed the names and telephone numbers of Teletech executive management in their applications as having been contacted and having provided such "reasonable assurance" when, in fact, there often never was contact, and most certainly never was any representation of the availability of the antenna site made.

8. A recent graphic example of this sort of problem is demonstrated by the attached letter shown at Appendix B which was received by Teletech concerning a proposed low-power television facility to be constructed by Home Shopping Network, Inc. ("HSN") at an antenna site exclusively managed by Teletech at Flint, Michigan. Although, in fact, a representative of HSN had contacted Teletech, his inquiry was merely to identify where Teletech had antenna sites in the area. The party never provided necessary particulars as to what he wanted to locate at the antenna site, and the caller was specifically cautioned that many of Teletech's antenna sites were at or near capacity, and a study would have to be made to determine whether the equipment proposed could even be

accommodated. Further, before providing any party with assurance that a Teletech antenna site is available, a computer study must be completed to determine electro-magnetic compatibility with other existing and proposed co-located radio systems. This was never done in the case of HSN, because they never made follow-up contact with Teletech. The letter which was received shows no return address or telephone number.[3]

9. Teletech submits that the Commission's Rules should be modified so as to provide slightly more demanding requirements as to what constitutes "reasonable assurance of antenna site availability." Further, Teletech proposes that this reasonable assurance be demonstrated by way of the attachment of written documentation from the owner or agent of the property owner as an exhibit to the application.

10. While Teletech agrees that "absolute assurance" such as by contract or lease is not a necessity, some sort of documentation from the owner or agent of the antenna site which acknowledges certain essential elements is certainly appropriate. Those essential elements should include:

a) A statement from the owner or agent that the antenna

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[3] Teletech believes that the reason the letter contains no return address or contact information is so that the applicant cannot be contacted by Teletech to advise that the representations made by the letter are baseless and wholly incorrect. At the same time, no doubt, the applicant will claim, if confronted, that it "thought" it had assurance as attested to by the letter.

site is presently available, and reasonably could be available in the future for the applicant's use, pending final negotiations and issuance of authorization by the FCC;[4]

b) A statement of the dimensions of space required by the transmitter/receiver equipment, as well as the antenna;[5]

c) A statement as to the nature of service to be provided by the proposed radio facilities (i.e., FM broadcast, LPTV, paging, SMR, mobile telephone, etc.);

d) A statement as to an approximation of the rent or fee to be paid by the applicant for this purpose;[6]

11. Teletech submits that these minimal requirements are not unnecessarily onerous, and are designed to provide assurance to the Commission that the applicant has done more than merely provide some double-talk to a party over the telephone and obtained a name and telephone number. Many applicants can simply and quickly fulfill these minimal requirements by writing to the property owner or agent, including all of the information, and merely seeking a confirmation letter from the property owner or agent expressing reasonable assurance of the availability of the

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[4] Since an applicant need not have a binding agreement or absolute assurance it follows that the representation need not go beyond reasonable assurance.

[5] This representation is necessary to demonstrate that the property owner or agent has some idea as to what it is that is being installed. Obviously, required space is a prime consideration as to whether or not the equipment could even be accomodated.

[6] This information could simply be a range. By providing information as to proposed rent or fees, this also shows strongly that there were bona fide discussions.

proposed site.

12. This documentation requirement should also be expanded to include applicants for new or relocated SMR facilities regulated under Part 90 of the Commission's Rules. Presently, SMR applicants are not required to provide any assurance as to the availability of a proposed antenna site. Recent filing "windows" for SMR facilities brought in hundreds of mass-produced speculator applications, many of whom were merely seeking to later "peddle" any authorization they received.

13. By requiring this elementary information from all AM, FM, NCE-FM, TV, LPTV, TV translator, TV booster, ITFS, Public Mobile Radio Service, Domestic Public Fixed Radio Service, and Specialized Mobile Radio Service applicants, the Commission would be helping to "weed out" those applicants who do not have a bona fide good faith intention of constructing facilities being applied for. This will result in a lesser burden upon the Commission caused by frivilous applications, as well as speed implemention of service to the public from these facilities.

14. Teletech maintains that the rule amendments proposed herein are purely administrative in nature, thereby allowing the Commission to issue a final order amending the rules without notice

and public procedure thereon, if it so desires.[7]

WHEREFORE, THE PREMISES CONSIDERED, Teletech respectfully urges the Commission to institute a rule making process or to otherwise order amending its rules as described herein.

Respectfully Submitted,

TELETECH, INC.

Dated: January 15, 1990

By: Susan Dobronski
President and
Chief Executive Officer

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Suite 615
23400 Michigan Avenue
Dearborn, Michigan 48124-1915
(313) 562-6873

[7] See 47 C.F.R. §1.407.

APPENDIX A

Section 21.15(a) is modified to read as follows:

(a) Antenna site availability.

(1) Applicants proposing a new station location (including receive-only stations and passive repeaters) shall list the proposed antenna site, and shall certify that it has obtained reasonable assurance that it can use the antenna site.

(2) Applicants shall also attach as an exhibit to their application evidence that it has obtain reasonable assurance that it can use the proposed antenna site. Said exhibit must include, at a minimum, the following information:

(i) If the antenna site is owned by the applicant, or a subsidiary or affiliated entity of the applicant, a statement to this effect;

(ii) If the antenna site is under lease or under written option to buy or lease, a written statement identifying the owner of the property (including name, address and telephone number), as well as identifying the agreement, the date of the agreement, and the general terms as to rent or fees. Said agreement shall be maintained on file for inspection by the Commission upon request;

(iii) If the antenna site is not owned, nor under lease or option to buy or lease, a written statement from the owner or agent in control of the antenna site indicating: that reasonable assurance of the availability of the site has been provided; the type and size of equipment which it is understood is intended to be installed at the antenna site; and, the proposed rental or fee to be paid for the use of the antenna site.

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Section 22.15 is modified by revising the introductory paragraph and paragraph (a) as follows:

§22.15 **Technical content of applications.** - All applications required by this part shall contain all technical information required by the application form and any additional information necessary to fully describe the proposed construction and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see Subparts C, F, G, H, I, J and K as appropriate). The following paragraphs describe a number of general technical requirements.

(a) Antenna site availability.

(1) Applicants proposing new or relocated fixed stations shall list the proposed antenna site, and shall certify that it has obtained reasonable assurance that it can use the antenna site.

(2) Applicants shall also attach as an exhibit to their application evidence that it has obtained reasonable assurance that it can use the proposed antenna site. Said exhibit must include, at a minimum, the following information:

(i) If the antenna site is owned by the applicant, or a subsidiary or affiliated entity of the applicant, a statement to this effect;

(ii) If the antenna site is under lease or under written option to buy or lease, a written statement identifying the owner of the property (including name, address and telephone number), as well as identifying the agreement, the date of the agreement, and the general terms as to rent or fees. Said agreement shall be maintained on file for inspection by the Commission upon request;

(ii) If the antenna site is not owned, nor under lease or option to buy or lease, a written statement from the owner or agent in control of the antenna site indicating: that reasonable assurance of the availability of the site has been provided; the type and size of equipment which it is understood is intended to be installed at the antenna site; and, the proposed rental or fee to be paid for the use of the antenna site.

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Section 73.3515 is added as follows:

§73.3515 **Antenna site availability.**

(a) Applicants proposing a new or relocated AM, FM, NCE-FM, TV, LPTV, TV translator, TV booster, or ITFS stations shall list the proposed antenna site, and shall certify that it has obtained reasonable assurance that it can use the antenna site.

(b) Applicants shall also attach as an exhibit to their application evidencing that it has obtain reasonable assurance that it can use the proposed antenna site. Said exhibit must include, at a minimum, the following information:

(1) If the antenna site is owned by the applicant, or a subsidiary or affiliated entity of the applicant, a statement to this effect;

(2) If the antenna site is under lease or under written option to buy or lease, a written statement identifying the owner of the property (including name, address and telephone number), as well as identifying the agreement, the date of the agreement, and the general terms as to rent or fees. Said agreement shall be maintained on file for inspection by the Commission upon request;

(3) If the antenna site is not owned, nor under lease or option to buy or lease, a written statement from the owner or agent in control of the antenna site indicating: that reasonable assurance of the availability of the site has been provided; the type and size of equipment which it is understood is intended to be installed at the antenna site; and, the proposed rental or fee to be paid for the use of the antenna site.

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Section 74.780 is modified by including the following rule section in the table shown thereat:

§73.3515 Antenna site availability.

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Section 74.910 is modified by including the following rule section in the table shown thereat:

§73.3515 Antenna site availability.

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Section 90.607 is modified by adding paragraph (3) as follows:

(3) Applicants proposing a new station location (including receive-only stations and passive repeaters) shall list the proposed antenna site, and shall certify that it has obtained reasonable assurance that it can use the antenna site. Applicants shall also attach as an exhibit to their application evidence that it has obtain reasonable assurance that it can use the proposed antenna site. Said exhibit must include, at a minimum, the following information:

(i) If the antenna site is owned by the applicant, or a subsidiary or affiliated entity of the applicant, a statement to this effect;

(ii) If the antenna site is under lease or under written option to buy or lease, a written statement identifying the owner of the property (including name, address and telephone number), as well as identifying the agreement, the date of the agreement, and the general terms as to

rent or fees. Said agreement shall be maintained on file for inspection by the Commission upon request;

(iii) If the antenna site is not owned, nor under lease or option to buy or lease, a written statement from the owner or agent in control of the antenna site indicating: that reasonable assurance of the availability of the site has been provided; the type and size of equipment which it is understood is intended to be installed at the antenna site; and, the proposed rental or fee to be paid for the use of the antenna site.

APPENDIX B

December 11, 1989

Mr. Ken Hoehn
c/o Teltech Inc.
P.O. Box 924
Dearborn, MI 48121

Dear Mr. Hoehn:

This will confirm your telephone conversation of 11/20/89 with Will McManus of Home Shopping Network, Inc., acting on my behalf in which you represented that a site located at Genesee Towers, 1 E. First St., Flint, MI would be made available for my use as a transmitter site for a low power television station and could be specified as a proposed transmitter site in an application for such a station to be filed with the Federal Communications Commission ("FCC").

It is understood, of course, that the final terms of my use of the site are subject to future negotiations between you and me in the event that the FCC authorizes construction and operation of the station.

Very truly yours,

Krista Fordham

Krista Fordham