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JUN 26 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

June 26, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington DC 20554

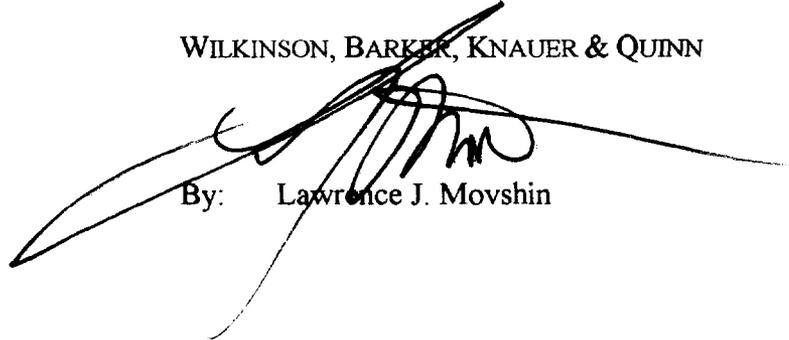
Re: Multipoint Networks
Petition for Reconsideration of Part 101 of the Commission's Rules

Dear Mr. Caton:

Pursuant to Section 1.429(h) of the Federal Communications Commission's ("Commission") Rules, enclosed for filing on behalf of Multipoint Networks, please find an original and eleven copies of a Petition for Reconsideration of Part 101 of the Commission's Rules. Please date stamp one copy and return to us via our courier.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN



By: Lawrence J. Movshin

Enclosures

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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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DOCKET FILE COPY ORIGINAL)

JUN 26 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In Re Matter of)

Reorganization and Revision of Parts 1, 2, 21, and)

94 of the Rules to Establish a New Part 101)

Governing Terrestrial Microwave Fixed Radio)

Services)

WT Docket No. 94-148

PETITION FOR RECONSIDERATION

MULTIPOINT NETWORKS

Lawrence J. Movshin

Cynthia S. Thomas

Its Attorneys

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1735 New York Avenue, NW

Washington, DC 20006

June 26, 1996

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SUMMARY

1. Multipoint Networks (“Multipoint”) specializes in wireless products that connect transaction-oriented equipment using Multiple Address System (“MAS”) frequencies licensed under Part 94 of the Federal Communications Commission’s (“Commission”) Rules. Over the past year, Multipoint and its customers have been unable to acquire MAS frequencies in a number of major metropolitan area markets. Multipoint believes that up to fifty percent (50%) of licensed MAS frequencies in some markets are not in use.

2. On May 28, 1996, the Commission published its Part 101 Rules consolidating provisions formerly found under Parts 21 and 94 of the Commission’s Rules. The newly adopted Part 101 Rules include automatic license forfeiture provisions intended to alleviate concerns about warehousing spectrum. While automatic license forfeiture provisions create a remedy that may alleviate some concern regarding warehousing of spectrum, the Commission must rely on licensees acting against their own interests to comply with these provisions. In addition, the current forfeiture rules provide little incentive for prospective licensees to ascertain whether MAS frequencies are in use. The party spending the resources necessary to identify the unused frequency is not guaranteed an opportunity to obtain that frequency for its own use. In fact, any party filing during the one-day “filing window” has an equal chance with all other applicants to obtain the recovered channel. A finder’s preference program for MAS frequencies would encourage industry members to police the industry as a whole, including other speculators.

3. The Commission has previously created finder's preference programs to assist in policing licensees and to discourage warehousing. Multipoint recommends that the Commission create a finder's preference program for MAS frequencies that operates in the same fashion as those existing programs. A finder will be given a dispositive preference to become licensed on a recovered channel as long as the finder is eligible for the target channels and establishes a *prima facie* case that the targeted licensee has in fact violated the Commission's Rules. In addition, Multipoint recommends that the Commission include rules for consensual preference requests where a finder arranges for voluntary license cancellation with a licensee that anticipates being unable to construct or initiate operation by the required deadline.

4. To supplement the Commission's compliance efforts regarding spectrum warehousing and to ensure that all available frequencies are licensed to parties with an immediate need, Multipoint petitions the Commission, upon reconsideration, to include in its Part 101 Rules a finder's preference program for MAS frequencies.

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In Re Matter of)
)
Reorganization and Revision of Parts 1, 2, 21, and)
94 of the Rules to Establish a New Part 101) WT Docket No. 94-148
Governing Terrestrial Microwave Fixed Radio)
Services)

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Rules of the Federal Communications Commission (“Commission”), Multipoint Networks (“Multipoint”), by its attorneys, hereby petitions the Commission to reconsider one aspect of the rules that address spectrum warehousing adopted under Part 101 in the captioned proceeding.¹ Specifically, Multipoint petitions the Commission to include a finder’s preference program for Multiple Address System (“MAS”) frequencies licensed under Part 101. Adoption of a finder’s preference program would facilitate spectrum efficiency and prevent warehousing. In support of its Petition, Multipoint shows the following.

I. BACKGROUND

Multipoint is a small business specializing in wireless products that allow its customers to connect transaction-oriented equipment, *e.g.*, ATM machines, using MAS licenses issued under Part 94 of the Commission’s Rules. Although Multipoint has patented technology that allows for particularly efficient use of these frequencies, it has regularly been unable to obtain MAS frequencies in major metropolitan markets that purchasers of its equipment could use.

¹ *Petitions for Reconsideration*, 47 C.F.R. § 1.429 (1995).

On May 28, 1996, the Commission published its Part 101 Rules, consolidating provisions formerly found under Parts 21 and 94 of the Commission's Rules.² To "alleviate" concerns about warehousing spectrum,³ the newly adopted Part 101 Rules include automatic license forfeiture provisions for failure to begin operations within eighteen (18) months,⁴ failure to meet construction deadlines,⁵ voluntary removal or alteration of facilities that renders the station nonoperational for thirty (30) days or more,⁶ and permanent discontinuance of service.⁷ All of these provisions assume, in large part, licensee self-policing and surrender of scarce frequencies. To supplement the Commis-

² *In the Matter of Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services*, WT Docket No. 94-148, *Report and Order*, 61 Fed. Reg. 26670 (May 28, 1996) ("*Part 101 Report and Order*"). The Commission will remove Part 94 from its Rules effective August 1, 1996, but has indefinitely grandfathered all microwave systems authorized and applications filed under Part 94 before that date. *Part 101 Report and Order*, slip op. at 29 ¶ 81. In fact, the Commission has afforded Part 94 authorizations and applications co-primary status with all systems subsequently authorized under Part 101. *Id.* The Commission specifically will not require licensees of systems authorized under Part 94 to conform their operations to the new interference protection criteria, channel loading requirements and antenna performance standards. *Id.* Multipoint, however, intends that its reconsideration proposal be applied to all MAS applications and authorizations whether filed or issued under Part 94 or Part 101.

³ *Id.* at 17 ¶ 36.

⁴ *Id.* at 66 (to be codified at 47 C.F.R. § 101.63(a) & (b)).

⁵ *Id.* at 67 (to be codified at 47 C.F.R. §§ 101.63(e) & 101.65(a)(1)).

⁶ *Id.* (to be codified at 47 C.F.R. § 101.65(a)(3)).

⁷ *Id.* (to be codified at 47 C.F.R. § 101.65(d)). The Commission defines a station that is inoperative for one year or more as having permanently discontinued service. *Id.* Finally, Section 101.305(d) governs forfeiture of common carrier licenses upon failure to render service over a twelve (12) consecutive month period. *Id.* at 169 (to be codified at 47 C.F.R. § 101.305(d)).

sion's compliance efforts regarding spectrum warehousing and to ensure that all available frequencies are licensed to parties with an immediate need for the spectrum, a finder's preference program should be established for recovering MAS frequencies as a critical supplement to the provisions intended to reduce spectrum warehousing now included under Part 101.

II. ARGUMENT

A. MAS FREQUENCIES NOT IN USE DEMONSTRATES THAT IMPLEMENTATION OF A FINDER'S PREFERENCE PROGRAM IS IN THE PUBLIC INTEREST

1. Recently Obtained Evidence Shows That a Number of MAS Frequencies in Major Metropolitan Areas are Not In Use

Over the past year, Multipoint and its customers have been unable to acquire MAS frequencies in a number of large urban markets. As a result, Multipoint deployed an FCC type-accepted scanner, model AR2700, in select markets to determine whether licensed MAS frequencies were actually in use. Based on the scan results, Multipoint believes that a large number of MAS frequencies — up to fifty percent (50%) of licensed frequencies in some markets — are in fact not in use.⁸

For example, on August 16, 1995, Multipoint scanned frequencies 928/952.10625 MHz, 928/952.18125 MHz, 928/952.19375 MHz and 928/952.11875

⁸ The Commission has periodically issued Public Notices making certain MAS frequencies available for reassignment in groups of major metropolitan areas. *See Public Notice Rep. No. 56000 (Oct. 6, 1995); Public Notice Rep. No. 61970 (Mar. 15, 1996); and Public Notice Rep. No. 62503 (Apr. 19, 1996)*. While reassignment provides some relief to spectrum warehousing, the Public Notice demonstrates that MAS frequencies are currently not in use. A finder's preference program would supplement the Commission's efforts and ensure efficient use of MAS spectrum.

MHz, licensed at a site located in Independence, Missouri (39-02-54N, 94-22-16W). No radio carrier frequency or data transmission was detected. Likewise, on August 17, 1995, Multipoint scanned the same frequencies licensed at a site located in Clayton, Missouri (38-39-02N, 90-20-05W). Again, no data transmission was detected.⁹ According to the engineering studies, the MAS frequencies had not been used, as of August 1995, for 16 to 18 months. The scan results present evidence that some licensees may be warehousing MAS spectrum even contrary to currently effective Part 94 forfeiture provisions.

2. Adoption of a Finder's Preference Program is in the Public Interest

Section 303(g) of the Communications Act of 1934, as amended, directs the Commission to encourage the "larger and more effective use of radio."¹⁰ To meet this directive, the Commission routinely adopts automatic license forfeiture provisions for failure to comply with construction and operation deadlines,¹¹ loading requirements¹² and provisions regarding permanent discontinuance of service.¹³ Through implementation of these provisions, the Commission intends to ensure that spectrum is used efficiently and

⁹ The scan did detect a carrier wave on 952.10625 MHz, but the frequency was consistent with white noise. No radio carrier frequency was detected on any of the other frequencies.

¹⁰ 47 U.S.C. § 303(g) (1988).

¹¹ *See, e.g.*, 47 C.F.R. §§ 90.155 (private land mobile radio services), 90.167 (commercial mobile radio services), 22.142 (public mobile services) and 22.946 & 22.947 (cellular).

¹² *See, e.g., id.* §§ 24.103 (narrowband personal communications services), 24.203 (broadband personal communications services).

¹³ *See, e.g., id.* §§ 90.157 (private land and commercial mobile radio services) and 22.144(c) & 22.317 (public mobile services).

not warehoused for future use when others concurrently need the spectrum. The Commission has included similar automatic license forfeiture provisions in its Part 101 Rules.

While construction and operation deadlines often are sufficient to deter spectrum warehousing in nascent services, finder's preference programs allow the industry to police itself and assist the Commission in ensuring all licensed frequencies are in use once services mature and frequencies become scarce.¹⁴ In addition, while automatic license forfeiture provisions create a remedy that may alleviate some concern regarding warehousing, the Commission must rely in large part on licensees *acting against their own interests* to comply with these provisions. A finder's preference provides appropriate incentives to interested parties to assure compliance.

In the absence of a finder's preference, a licensee may warehouse scarce MAS frequencies for future use because of concerns that it will be unable to acquire additional frequencies when ultimately needed. If a licensee surrenders an unused frequency, the wait before it could obtain another frequency in a major market could be

¹⁴ See *In re Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations*, PR Docket No. 90-481, *Report and Order*, 6 FCC Rcd 7297, 7302-09 (1991) ("*Part 90 Preference Order*"), *modified and clarified*, 8 FCC Rcd 6690 (1993) ("*Part 90 Memorandum Opinion and Order*") (adopting a finder's preference program); see also *Part 101 Report and Order*, slip op. at 17 ¶ 36 (implementing automatic forfeiture provisions to alleviate spectrum warehousing); *Amendment of Part 94 of the Commission's Rules to Permit Private Video Distribution Systems of Video Entertainment Access to the 18 GHz Band*, PR Docket No. 90-5, *Report and Order*, 6 FCC Rcd 1270 n.46 (1991) (deferring consideration of a finder's preference program); *Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, CC Docket No. 92-115, *Report and Order*, 9 FCC Rcd 6513, 6518 (1994) (deferring consideration of a finder's preference program); *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8162 (1994) (deferring consideration of a finder's preference program).

considerable. Further, it is virtually impossible for the Commission to audit every licensee's system for compliance. Because of the Commission's limited resources, an unused frequency may not be discovered. Accordingly, licensees may retain unused frequencies for future use rather than surrender the frequencies in accordance with the forfeiture provisions of Parts 94 or 101.¹⁵

Under the current MAS regulatory scheme, little incentive exists for Multipoint, or any other prospective MAS licensee, to ascertain whether MAS frequencies are not in use. The reason is simple: the party spending the resources necessary to identify the unused frequency is not guaranteed an opportunity to obtain that frequency for its own use. In fact, the long wait and substantial demand for MAS frequencies virtually precludes that opportunity; the current process allows any party filing during the one-day "filing window" an equal chance with all other applicants to obtain the recovered channel. Some benefit must be created to encourage industry members to police other speculators.

The Commission has previously created finder's preference programs to assist in policing licensees and to discourage warehousing.¹⁶ Under these programs, parties that identify unused frequencies or licensees that are not operating in compliance with their authorization are given the first chance to acquire the recovered frequencies. The Commission has stated that "it is difficult for new applicants to become licensed or

¹⁵ 47 C.F.R. § 94.53; *Part 101 Report and Order*, slip op. at 66 (to be codified at 47 C.F.R. § 101.63).

¹⁶ For example, Part 90 establishes a finder's preference programs for channel assignments on an exclusive basis in the 220-222 MHz and 470-512 MHz bands. 47 C.F.R. § 90.173(k).

for existing licensees to expand their systems because of the scarcity of available spectrum. By offering a [finder's preference program], we will expand licensing opportunities."¹⁷ The Commission has even conceded that prospective applicants "may be able to uncover facts of which we are not aware or which we cannot readily ascertain."¹⁸ For this reason, Multipoint respectfully requests that the Commission adopt a finder's preference program with regard to MAS frequencies.

B. THE MECHANICS OF THE FINDER'S PREFERENCE PROGRAM FOR MAS FREQUENCIES SHOULD MIRROR EXISTING FINDER'S PREFERENCE PROGRAMS

Multipoint recommends that the MAS finder's preference program operate in the same fashion as other finder's preference programs.¹⁹ Specifically, a finder — any party that helps the Commission recover channels — will be given a dispositive preference to become licensed on the recovered channels.²⁰ A dispositive preference will *only*

¹⁷ *Part 90 Preference Order*, 6 FCC Rcd at 7303.

¹⁸ *Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations*, PR Docket No. 90-481, *Notice of Proposed Rule Making*, 5 FCC Rcd 6401, 6404 (1990).

¹⁹ Proposed rules are included in Attachment A to this petition.

²⁰ *See Procell Communications, Inc.*, No. WTB/ENF-I-95-0373, slip op., at 1 n.3 (May 23, 1996); *Part 90 Preference Order*, 6 FCC Rcd at 7302. A finder's preference will not apply to channels scheduled for or undergoing review under the Commission's current compliance activities. *See Part 90 Preference Order* at 7307. In addition, licenses that expire when the licensee does not apply for renewal or timely seek reinstatement cannot be the subject of a finder's preference request. *See Part 90 Memorandum Opinion and Order*, 8 FCC Rcd at 6693.

be issued, however, if the finder is eligible for the target channels and establishes a *prima facie* case that the targeted licensee has in fact violated the Commission's Rules.²¹

The finder will have the burden of establishing a *prima facie* case, which should include evidence, *i.e.*, affidavits, invoices, photographs, contracts, and correspondence, that will satisfy the standard.²² To ensure timely processing of a finder's preference request,²³ a finder will be required to provide the following information:

- a statement that the finder is seeking a finder's preference;
- the name, mailing address, and call sign of the target licensee (even if the finder believes the target is out of business);
- a list of the licensed locations and frequencies involved;
- a list of the Commission's Rule(s) that the finder alleges the target licensee is violating, including the benchmark dates the target licensee missed;
- a statement of how the licensee is violating the Commission's Rule(s); and
- a detailed statement describing the specific basis for the applicant's knowledge of the alleged violation.²⁴

²¹ See *Part 90 Preference Order*, 6 FCC Rcd at 7303 & 7308. The Commission should limit the MAS finder's preference "strictly to those rule violations that lend themselves to conclusive and expeditious action," such as construction, operation and discontinuance of operation rules. See *id.* at 7305; *Procell Communications*, slip op. (affirming the grant of an Award of Dispositive Preference based on discontinuance of station operations in violation of Commission rules).

²² See *id.* at 7308.

²³ Although Part 90 requires a 180-day delay after the construction deadline, see *id.* at 7307, no lengthy delay is needed in the MAS service. A thirty (30) day waiting period is therefore proposed. Requests that allege discontinued operation may file a request at any time after the station ceases operation for one year. See *id.*

²⁴ See *id.* at 7306; Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Mobile Stations, (continued...)

If a finder states a *prima facie* case and meets all procedural requirements, the Commission will forward the request to the target licensee and provide an opportunity to respond.²⁵ If the licensee fails to rebut the finder's *prima facie* case, the Commission will issue a finder's preference award letter. A finder will not be allowed to file an application for the targeted channels until it receives the award letter from the Commission. Upon receipt of the letter, the finder will have ninety (90) days to file an acceptable application for the targeted frequencies.²⁶ If the finder fails to establish a *prima facie* case, the Commission will dismiss the request without action.²⁷

Further, Multipoint recommends that the Commission include rules for consensual preference requests where a finder arranges for voluntary license cancellation with a licensee that anticipates being unable to construct or to initiate operation by the required deadline.²⁸ The finder will file a preference request along with the licensee's cancellation request well before the construction and operation deadline.²⁹ Both the existing licensee and the finder must certify that they have not and will neither receive nor give any direct or indirect compensation in connection with the consensual license

²⁴ (...continued)
PR Docket No. 90-481, *Public Notice*, 10 FCC Rcd 749, 749-50 (1994).

²⁵ *See Part 90 Memorandum and Order*, 8 FCC Rcd at 6694.

²⁶ *See Part 90 Preference Order*, 6 FCC Rcd at 7308.

²⁷ *See id.*; *Part 90 Memorandum Opinion and Order*, 8 FCC Rcd at 6694.

²⁸ *See Part 90 Preference Order*, 6 FCC Rcd at 7305.

²⁹ *See id.* at 7307.

cancellation.³⁰ This noncompensation certification will reduce the likelihood of using the finder's preference as a loophole to enable the assignment of unconstructed systems.

Rather than wait for the award letter, the finder may separately file its Form 402 application at the time it files its consensual preference request. The Commission should require the finder to assume the existing licensee's construction and operation deadline if the Commission grants an award letter and the finder's timely application.³¹

Finally, all preference request information should be filed under oath or under penalty of perjury pursuant to Section 1.16 of the Commission's Rules.³² This certification requirement is necessary to prevent frivolous claims using the finder's preference program as a means to harass licensees or violate Commission Rules. In addition, the Commission should explicitly state that it will strictly enforce sanctions against finder's preference applicants or licensees who misuse or abuse the program.

III. CONCLUSION

MAS frequencies are scarce in major metropolitan areas. Innovative companies like Multipoint are developing new equipment and applications, but cannot distribute their equipment and applications because prospective buyers cannot acquire frequencies. To promote continued innovation, the Commission should adopt a finder's

³⁰ *See id.* at 7306

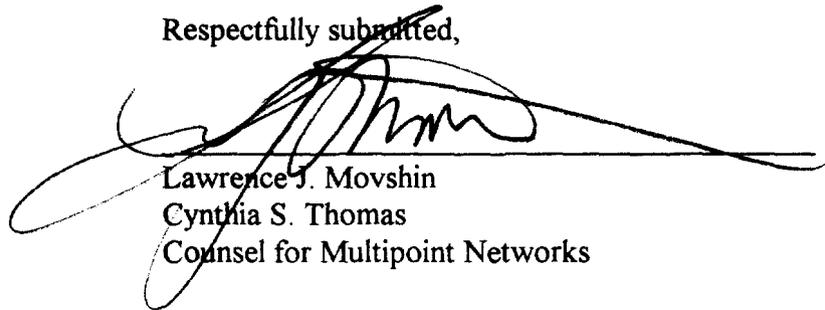
³¹ *See id.* at 7305

³² 47 C.F.R. § 1.16. For example: "I declare under penalty of perjury that the statements made in this finder's preference request are true and correct." Although notarization would not be required, simply "subscribing" before a notary would not satisfy the requirements of Section 1.16.

preference program for MAS frequencies. A finder's preference program will allow the industry to police itself and will assist the Commission in ensuring that all licensed frequencies are in use.

WHEREFORE, for the foregoing reasons, Multipoint petitions the Commission upon reconsideration to include in its Part 101 Rules a finder's preference program for MAS frequencies.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'L. Movshin', is written over a horizontal line. The signature is highly cursive and extends significantly to the right of the line.

Lawrence J. Movshin
Cynthia S. Thomas
Counsel for Multipoint Networks

June 26, 1996

PROPOSED RULE

FEDERAL COMMUNICATIONS COMMISSION
Amendment to Part 101 of the Commission's Rules
Private Operational-Fixed Microwave Service

Add to the end of Section 101.65, the following:

§101.65 Forfeiture and termination of station authorizations.

* * *

(e) Notwithstanding any other provisions of this part, any eligible person may seek a dispositive preference for a frequency assignment on an exclusive basis in the 928-960 MHz bands by submitting information that leads to the recovery of frequencies in these bands. Recovery of such frequencies must result from information provided regarding the failure of existing licensees to comply with the provisions of §§ 101.63, 101.147(b) or 101.65(d).

(1) *Eligibility for preference.* - A finder must be eligible to be a licensee in the private operational-fixed microwave service and must be eligible to be licensed in the frequencies targeted by its request.

(2) *Timeliness of finder's request and application.* - The Commission shall dismiss without action all untimely finder's requests. A preference request based on a construction or placed-in-operation violation and filed less than 30 days after the construction deadline of the target license is considered untimely. A request targeting a license under Commission review or investigation is also considered untimely. A finder awarded a preference must file an application for the targeted channel(s) with the Commission within 90 days of the date the preference is awarded; the finder shall lose its preference if it does not timely file and prosecute such application. Where more than one finder obtains a preference for the same channel(s), the Commission will grant the license to operate on the channel(s) to one of these applicants through its [] procedures. See § [] of this chapter. Preferences are not assignable or transferable except under the same standards provided for involuntary assignment or transfer of certain authorizations. See § 1.924(c) of this chapter.

(3) *Contents of request.* - The finder's preference request (the original and three (3) complete copies) shall be filed with the appropriate fee at the following address: Federal Communications Commission, FP, P.O. Box 358305, Pittsburgh, PA 15251-5305. See § 1.1102(22) of the chapter for fee requirements (including the use of fee Form 155). All finder's program correspondence not requiring payment of a fee shall be addressed to: Federal Communications Commission, Finder's Preference Program, 1270 Fairfield Road, Gettysburg, PA 17325-7245. The finder shall state that it is requesting a preference. The request shall contain detailed information to establish a prima facie violation, including: the name and address of the licensee allegedly violating the applicable rules; the licensee's call sign(s), frequencies and the authorized station location(s); the Commission Rule(s) that the licensee is allegedly violating, including the dates or benchmarks the licensee has failed to meet; and a detailed statement as to the

specific basis for the finder's knowledge that the licensee is violating the rules specified in this section. All preference requests shall be in the form of a sworn affidavit or a declaration dated and subscribed by the finder and any other declarant as true and under penalty of perjury as set forth in § 1.16 of this chapter.

(4) *Processing of request.* - Requests containing general and conclusory statements shall be dismissed summarily; requests that do not state a prima facie violation shall also be dismissed. A request returned to the applicant for correction shall be processed in its original position in the processing line if the corrected copy request is resubmitted to the Commission within 60 days of the date of the return notice. If the Commission determines that a request has met all procedural requirements and has stated a prima facie violation, the Commission shall forward the request to the target licensee's address of record for the subject license and to any "last known address" provided by the finder. The target licensee may then file a response; any such response (an original and two copies) must be filed within 30 days of the date of the Commission's letter unless such letter specifies a different time period. The target licensee shall serve a complete copy of its response on the finder. See § 1.47 of this chapter.

(5) *Consensual preference requests.* - The dispositive preference provided for in this subsection also may be awarded to any person who arranges for an existing licensee to voluntarily request license cancellation because the licensee anticipates that it will be unable to timely construct and place its licensed facilities in operation. See §§ 101.63, 101.147(b) and 101.65(d). In the instance of such consensual preference requests, both the finder and licensee must certify that they have not and will not give or receive any direct or indirect compensation in connection with the requested license cancellation, and the finder must assume the former licensee's deadline for constructing and placing the licensed facility in operation.