

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
)
Amending Part 0 of the Commission's Rules)
and Regulations to Streamline Small or Non-) RM/Docket No. _____
Controversial Proceedings for Exemptions,)
Waivers, or Rulemakings by Delegation of)
Authority to Certain Bureau Chiefs)

To the Commission:

PETITION FOR RULEMAKING

COMES NOW the Petitioner, JAMES EDWIN WHEDBEE, who pursuant to Section 1.405 of the Commission's rules and regulations hereby respectfully petitions and requests that the Commission issue its Notice of Proposed Rulemaking (NPRM) looking toward amending Part 0 of the Commission's rules, as set forth in the attached Appendix, to streamline the process for obtaining exemptions, waivers, and rulemakings in small or noncontroversial matters brought before the Commission regarding new technologies or new application(s) of existing technologies. To the extent anything herein is deemed an informal request for Commission action, pursuant to Section 1.41 of the Commission's rules, the undersigned Petitioner requests the Commission act upon it favorably as if formally submitted. As and for good cause herefor, Petitioner states the following.

1. Section 7 of the Communications Act, as amended (47 U.S.C. Section 157), requires expedited disposition of proceedings before the Commission regarding new services and/or technologies.

2. Section 5(c) of the Communications Act, as amended (47 U.S.C. Section 155(c)), authorizes delegations of authority from the Commission to its Bureau Chiefs.

3. Numerous legal, technological, and engineering commenters in various proceedings before the Commission have asked for, and in fact begged, repeatedly for more expeditious treatment of noncontroversial and/or small matters brought before the Commission, for which ample statutory authority exists to do so. (See, *inter alia*, comments of Mitchell Lazarus in Docket #09-157, IEEE in Docket #13-259, etc.)

4. The future innovative, engineering, and technological capacity of the United States of America is being stifled by delay, together with the prospective expansion of economic and employment opportunities. The Commission itself has adopted a consent agenda; however, there is still far too long a delay in proceedings to keep up with rapid technological developments; accordingly, existing procedures have in fact become the chief source of injustice rather than preventing the injustices envisioned in the adoption of the Administrative Procedures Act. Therefore, delegating some of the Commission's authority to certain Bureau Chiefs promotes the justice and equity lacking within the current procedures.

5. Because it requires the exercise of no technical expertise for which the courts have given deference to administrative agencies in the past, the past practice of discarding proceedings in mass termination proceedings is, at best, dubious under the Administrative Procedures Act; accordingly, giving the Commission more channels through which small and/or noncontroversial proceedings may be disposed will eliminate such doubts. Nothing in this proposed amendment to Section 0.201 of the Commission's rules would require or necessitate any change in Commission procedures, but would allow two of the Commission's Bureau Chiefs to act under delegated authority to take expedited action on new technological developments through exemptions, waivers, and rulemakings when, in their view, the situations warrant doing so. Moreover, nothing in this proposal takes away the Commission's "final say" in such matters.

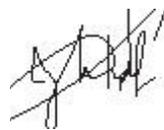
6. The proposed rule, in Appendix A, is incorporated herein by reference as if fully set out

hereinbelow. The proposed rule delegates the full Commission's authority to the Bureau Chiefs for the Wireless Telecommunications Bureau and Office of Engineering and Technology on noncontroversial requests for exemptions, waivers, or rulemakings, particularly where the aggregate fiscal impact is below fifty million dollars over a period of ten years. In those instances, such as Amateur Radio, where there is no financial impact of a radio service, that authority may be subdelegated to Deputy Chiefs. If adopted, the proposed rule will remove many of the less controversial issues from the Commission's agenda (consent or otherwise). The rule is in the public interest, convenience, and necessity in that it responds to rapidly developing new technologies and new services while leaving existing matters subject to existing procedures.

WHEREFORE, the foregoing considered, Petitioner respectfully requests the Commission issue its NPRM including the elements proposed herein and appended hereto.

Respectfully Submitted:

January 16, 2016



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PETITIONER

APPENDIX "A" - PROPOSED RULE

Add as subsection (e) to Section 0.201 of the Commission's rules and regulations (47 C.F.R. Section 0.201), the following:

“(e) The foregoing notwithstanding and notwithstanding anything else in Subpart B of this Part (0), the Commission delegates its full authority to dispose of requests for exemptions, waivers, and rulemaking regarding Parts 2, 5, 15, 18, 80, 87, 90, 95, 96, 97, and 101 for new technologies or new application(s) of existing technologies as follows...

- (1) To both the Chief, Wireless Telecommunications Bureau and Chief, Office of Engineering and Technology, concurrently, as regards Part 2, wherein the anticipated aggregate financial impact of the proceedings is estimated to be less than fifty million dollars (\$50,000,000.00) over a period of ten (10) years, and public comments on the proceedings are favorable, including provisional, interlocutory, and final dispositions thereupon;
- (2) To the Chief, Office of Engineering and Technology, solely, as regards Parts 5, 15, and 18, wherein the anticipated aggregate financial impact of the proceedings is estimated to be less than fifty million dollars (\$50,000,000.00) over a period of ten (10) years, and public comments on the proceedings are favorable, including provisional, interlocutory, and final dispositions thereupon;
- (3) To the Chief, Wireless Telecommunications Bureau, solely, as regards Parts 80, 87, 90, 95, 96, 97, and 101, wherein the anticipated aggregate financial impact of the proceedings is estimated to be less than fifty million dollars (\$50,000,000.00) over a period of ten (10) years, and public comments on the proceedings are favorable, including provisional, interlocutory, and final dispositions thereupon; and,
- (4) As regards rulemakings under this subsection for which the Commission has received a Petition for Rulemaking or Informal Request in the nature of a Petition for Rulemaking, provided the full substance of that request is the undertaking of the proceeding, the Chiefs to whom this authority is delegated may instead issue a Notice of Proposed Rulemaking on the Commission's own motion, as if the Petition had not been received, including provisional, interlocutory, and final dispositions thereupon-provided however, that except as for final dispositions, a Further Notice of Proposed Rulemaking is issued to resolve any issue(s) from which the provisional or interlocutory decision is bifurcated; and,
- (5) As regards rulemakings under this subsection for which a novel issue is presented, the Chiefs to whom this authority is delegated shall provide a copy of the proceeding to each Commissioner; however, if the Chief(s) concerned do not receive a signed written objection from any Commissioner within ten (10) calendar days of their receipt of such copy(ies), authority is hereby delegated for Chiefs to take and consider evidence as well as complete the rulemaking proceedings to final disposition.
- (6) In the exercise of these delegations of authority, the Bureau Chiefs concerned may consult with Commissioners, other Chiefs, Deputy Chiefs, Counsel, and Commission Staff, and the outcome thereof shall be deemed part of the deliberative process of the Bureau Chiefs to whom these delegations of authority are granted. As regards consultations with Counsel, work-product privilege shall apply unless waived.
- (7) No ex parte communications are permitted in proceedings under this subsection whatsoever, regardless of whether or not same are disclosed. When a comment and reply comment period

ends, any communication in that proceeding after those respective periods shall be struck from the record and given no dispositive consideration. Any inadvertent contact between proponent(s), opponent(s), or interested party(ies) on the record, and the Bureau Chiefs to whom authority is delegated hereunder shall be disclosed on the record together with what steps were taken to mitigate any influence of such inadvertent contact, including, if necessary, the termination of the proceedings without disposition or transfer thereof to the full Commission.

- (8) Nothing herein shall be construed as prohibiting the Commission from taking from a Bureau Chief to whom authority hereunder is delegated any matter under consideration by reason of such delegation.
- (9) Nothing herein shall be construed as prohibiting any bona fide interested party from applying for Commission review of actions taken pursuant to delegated authority hereunder, if aggrieved thereby; however, such applicant shall have the burden of proof as to standing as an aggrieved party.
- (10) The authority delegated hereby is purely discretionary and a Bureau Chief is under no obligation to undertake any proceeding under this authority. When a Bureau Chief chooses to exercise this delegated authority, same shall be stated in the Notice of proceedings so all parties are aware that ex parte contact is prohibited.
- (11) Where there is zero discernible financial impact for a period of ten (10) years regarding any undertaking hereunder, Bureau Chiefs to whom authority is delegated hereunder may subdelegate that authority to Deputy Chiefs by written memorandum, however further subdelegation or redelegation is prohibited.”