

preventing the filing of such applications and barring applicants from initiating reexamination of such matters within a short time after final decision.

#### Background

2. The Commission's Rules have long prevented the filing of repetitious license applications. Prior to 1998, the rules barring repetitious license applications were set forth in separate rule parts pertaining to each of the Wireless Radio Services. These rules generally prohibited the filing of a repetitious application within twelve months of the denial or dismissal with prejudice of a substantially similar application. In 1998, the Commission consolidated its licensing rules for all Wireless Radio Services, and enacted § 1.937 to replace its prior service-specific rules on the filing of repetitious or conflicting applications. Section 1.937 provides,

(a) Where the Commission has, for any reason, dismissed an application for a new station or for any modification of services or facilities with prejudice, or revoked the license for a radio station in the Wireless Radio Services, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.

(b) If an applicant has been afforded an opportunity for a hearing with respect to an application for a new station or an enlargement of service area, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application for service of the same type to the same area by that applicant, or by its successor or assignee, or on behalf of or for the benefit of the parties in interest to the original application, until after the lapse of 12 months from the effective date of final Commission action on the original application.

(c) If an appeal has been taken from the action of the Commission denying a particular application, a like application for service of the same type to the same area, in whole or in part, filed by that applicant or by its successor or assignee, or on behalf of or for the benefit of the parties in interest to the original application, will not be considered until the final disposition of such appeal.

(d) While an application is pending, any subsequent inconsistent or

conflicting application submitted by, on behalf of, or for the benefit of the same applicant, its successor or assignee will not be accepted for filing. Section 1.937 and its antecedents were adopted to achieve sound administrative process by barring applicants from immediately re-litigating matters already decided.

3. On March 20, 2002, the Commission released a *Notice of Proposed Rule Making*, 67 FR 34651, May 15, 2002, in which it proposed to amend § 1.937 to clarify that the prohibition on repetitive applications applies to all types of license applications (*i.e.*, new applications and renewal applications), and applies equally to all dispositive actions, including dismissals with prejudice, denials, and revocations. Comments were filed by the American Mobile Telecommunications Association, Inc. (AMTA). AMTA supports the Commission's effort to simplify its rules, but cautions the Commission to do so carefully so as not to apply the sanction to applications dismissed without prejudice.

#### Procedural Matters

##### A. Regulatory Flexibility Act Analyses

4. The FCC, pursuant to 5 U.S.C. 605(b) certifies that the rule will not have a significant economic impact on a substantial number of small entities. The purpose of this *Report and Order* is to prohibit the filing of applications for radio station licenses within twelve months of the denial of a substantially similar application. This change is made to promote the most efficient use of the FCC's resources by preventing the immediate filing of repetitious applications. The FCC has analyzed the information submitted during the comment period and the proposed rule change does not impose any additional compliance burden on small entities regulated by the FCC. Accordingly, we certify, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), that the rule change established in this *Report and Order* will not have a significant economic impact upon a substantial number of small entities, as that term is defined by the RFA. The FCC's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Report and Order*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA. We shall also publish a copy of this certification in the **Federal Register**.

##### B. Paperwork Reduction Act

5. This *Report and Order* does not contain either a proposed or modified information collection.

#### Ordering Clauses

6. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, this *Report and Order* is hereby adopted.

7. The rules set forth in the rule changes will become effective June 13, 2003.

8. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order* including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**  
Deputy Secretary.

#### Rule Changes

■ For the reasons discussed in the preamble the FCC amends 47 CFR part 1 as follows:

■ 1. The authority citation for part 1 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Section 1.937 is amended by revising paragraph (a), removing and reserving paragraph (b) and revising paragraph (c) to read as follows:

##### § 1.937 Repetitious or conflicting applications.

(a) Where the Commission has, for any reason, dismissed with prejudice or denied any license application in the Wireless Radio Services, or revoked any such license, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.

(b) [Reserved]

(c) If an appeal has been taken from the action of the Commission dismissing with prejudice or denying any application in the Wireless Radio Services, or if the application is subsequently designated for hearing, a like application for service of the same type to the same area, in whole or in