

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C., 20554, December 1961

PUBLIC NOTICE

REVISED PATENT PROCEDURES OF THE FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission announces that it is strengthening its patent procedures to assure that the availability of broadcast equipment and radio apparatus meeting performance standards established by the Commission's rules and regulations will not be prejudiced by unreasonable royalty or licensing policies of patent-holders. Essentially, the new procedure, which supplements existing patent procedures of long standing, provides for enlarging the staff in order that the Commission may keep currently abreast of all patents issued and technical developments in the communications field which may have an impact on technical standards approved by the Commission in the various services.

Under the Communications Act of 1934, as amended (47 U.S.C. 303(g)), the Commission is charged with the responsibility to "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest." In this connection, the Commission promulgates technical standards for broadcasting and other radio communication services to establish requirements which its licensees must meet in order to provide the kind and quality of service desired. Such requirements may frequently be met only by the use of patented equipment. Therefore, in promulgating these technical standards and regulations, the Commission necessarily gives consideration to the effect of patent rights upon the availability of equipment that will meet the specified performance standards. In order to determine how these rights are exercised, information relating to licensing and royalty agreements is essential.

The Commission's patent policy for a number of years has been to obtain patent information whenever it becomes relevant to a particular proceeding. For example, the Commission utilized this method of obtaining patent information from system proponents in recent rule-making proceedings to establish standards to permit FM broadcast stations to transmit stereophonic programs on a multiplex basis (docket 13506). In addition, the Commission has required the principal common carriers, such as American Telephone & Telegraph Co., International Telephone & Telegraph Co., Radio Corp. of America, and Western Union to file semiannual patent reports. These procedures will continue to be utilized.

In view of the rapid technological advances in the communications field, the Commission has determined to augment its staff in order to permit a regularized, continuing, and current study of new technical developments relevant to its jurisdiction. Patent Office publications and records and technical journals will be studied and information of interest will be compiled in the Commission's files. Copies of relevant

patents as issued will be secured. The Commission's staff will ascertain the assignment or licensing arrangements for significant patents either by examination of the Patent Office records or by direct inquiry to the patentee, licensee, or assignee.

Whenever it appears that the patent structure is or may be such as to indicate obstruction of the service to be provided under the technical standards promulgated by the Commission, this fact will be brought to the Commission's attention for early consideration and appropriate action.

Through these revised and strengthened procedures, the Commission believes that it will be able to secure the information necessary to protect fully the public interest in this all-important area.

APPENDIX C

1. It is proposed that the following new sections be added to part 73 of Commission rules and regulations:

OVER-THE-AIR SUBSCRIPTION TELEVISION OPERATIONS

§ 73.641 DEFINITIONS.

(a) *Subscription television.*—A system whereby subscription television broadcast programs are transmitted and received.

(b) *Subscription television broadcast program.*—A television broadcast program intended to be received in intelligible form by members of the public only for a fee or charge.

§ 73.642 LICENSING POLICIES.

(a) Subscription television service may be provided only upon specific authorization therefor by the Commission. Such authorization will be issued only to:

(1) The licensee of a television broadcast station;

(2) The holder of a construction permit for a new television broadcast station; or

(3) An applicant for a construction permit for a new television broadcast station.

(b) Application for such authorizations shall be made in the manner and form prescribed by the Commission. If the Commission, upon consideration of such application, finds that the public interest, convenience, and necessity would be served by the granting thereof, it will grant such application. In the event it is unable to make such a finding, the Commission will then formally designate the application for subscription television authorization for hearing and proceed pursuant to the provisions of section 309 (e) of the Communications Act and the Commission's rules and regulations applicable thereto. The Commission may impose such conditions upon the grant as may be appropriate.

(c) Holders of subscription television authorizations shall complete construction of subscription television transmitting facilities within a period of 3 months after issuance of the authorization unless otherwise determined by the Commission upon proper showing in any particular case.

(d) A subscription television authorization will not be issued or renewed for a period longer than the regular license period of the applicant's television broadcast authorization.

(e) No subscription television authorization shall be granted to a television broadcast station licensee or permittee, or to an applicant for a construction permit for such a station, having any contract, arrangement, or understanding, express or implied, which:

(1) Prevents it from rejecting or refusing any subscription television broadcast program which it reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest; or substituting a subscription or conventional program which in its opinion is of greater local or national importance; or

(2) Delegates to any other person the right to schedule the hours of transmission of subscription programs: *Provided, however, That this rule shall*

not prevent a licensee, permittee, or applicant from entering into an agreement or arrangement whereby it agrees to schedule a specific subscription television broadcast program at a specific time; or

(3) Prevents it from making a free choice of subscription programs, whatever their source; or

(4) Deprives it of the right of ultimate decision concerning the maximum amount of any subscription program charge or fee.

§ 73.643 GENERAL OPERATING REQUIREMENTS.

(a) No commercial advertising announcements shall be carried during subscription television operations except for promotion of subscription television broadcast programs before and after such programs.

(b) Charges, terms, and conditions of service to subscribers shall be applied uniformly: *Provided, however,* That subscribers may be divided into reasonable classifications approved by the Commission, and the imposition of different sets of terms and conditions may be applied to subscribers in different classifications.

(c) Any television broadcast station licensee or permittee authorized to broadcast subscription programs shall broadcast, in addition to its subscription broadcasts, at least the minimum hours of programs required by section 73.651 of the rules.

(d) If a television broadcast station supplies the only grade A signal to a community, not more than 15 percent of its nonprime broadcast time (including subscription and nonsubscription broadcast time during that period), and not more than 50 percent of its prime broadcasting time (including subscription and nonsubscription broadcast time during that period) may be devoted to subscription broadcasting; if it supplies the second or third grade A signal, not more than 25 percent of its nonprime broadcast time, and 60 percent of its prime broadcast time; if it supplies the fourth grade A signal, not more than 50 percent of its nonprime broadcast time, and 75 percent of its prime broadcast time; and if it is one of five or more stations supplying a grade A signal to the community, there is no limitation on the amount of broadcast time that may be devoted to subscription broadcasting.

(e) Except as they may be otherwise waived by the Commission in authorizations issued hereunder, the rules applicable to regular television broadcast stations will be applicable to subscription television operations.

§ 73.644 EQUIPMENT AND TECHNICAL OPERATING REQUIREMENTS.

(a) Subscription television equipment must be approved in advance by the Commission pursuant to the "type approval" and "type acceptance" procedures now established by part 2, subpart F—Equipment Type Approval and Type Acceptance—of the Commission's rules and regulations.

Additional proposed rules concerning equipment and technical operating requirements will be announced at a later date.