

## § 21.28

or for other relief pursuant to § 21.30(a), or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the transmitter site or response station hub until such time as the Commission issues a license.

[52 FR 37779, Oct. 9, 1987, as amended at 54 FR 10327, Mar. 13, 1989; 60 FR 36552, July 17, 1995; 61 FR 26674, May 28, 1996; 63 FR 65101, Nov. 25, 1998; 64 FR 4054, Jan. 27, 1999]

### § 21.28 Dismissal and return of applications.

(a) Except as provided under paragraph (c) of this section and under § 21.29, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or prior to selection of the comparative evaluation procedure of § 21.35. An applicant's request for return of its application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 21.29 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing, after selection of the comparative evaluation procedure of § 21.35, or after selection as a tentative selectee in a random selection proceeding, only if:

(1) A written petition is submitted to the Commission and, in the case of applications designated for hearing or comparative evaluation, is properly served upon all parties of record;

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provisions of § 21.29 (whenever applicable) and demonstrates good cause.

(c) Except as provided under § 21.29, an application designated for inclusion in the random selection process may be dismissed without prejudice as a matter of right if the applicant requests its dismissal at least 2 days prior to a random selection proceeding. An applicant's request for return of its applica-

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tion after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Requests for dismissal shall comply with the provisions of § 21.29 as appropriate.

(d) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal will be without prejudice prior to designation for hearing, selection of the comparative evaluation procedure of § 21.35, or tentative selection by the random selection process, but may be with prejudice for unsatisfactory compliance with § 21.29, or after designation for hearing, selection of the comparative evaluation process, or selection as a tentative selectee in a random selection proceeding.

(e) The Commission will dismiss an application filed by a cable television company which fails to comply with the provisions of § 21.912 of this part.

(f) A Multipoint Distribution Service application will be dismissed if the applicant seeks to change ownership or control, except in the case of a *pro forma* change of ownership or control (bankruptcy, death, or legal disability).

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985; 55 FR 46009, Oct. 31, 1990; 58 FR 11797, Mar. 1, 1993]

### § 21.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Except as provided in paragraph (b) of this section, applicants or any other parties in interest to pending applications shall comply with the provisions of this section whenever:

(1) They participate in any agreement (or understanding) which involves any consideration promised or received, directly or indirectly, including any agreement (or understanding) for merger of interests or the reciprocal withdrawal of applications; and

(2) The agreement (or understanding) may result in either:

(i) A proposed substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a