



2000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20006
TEL: 202-429-8970

www.lermansenter.com

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Applicability of FCC Experimental Radio Service Regulations To Satellite Service Experiments

In 1998, the FCC issued a Report and Order ("Order") streamlining the Federal Communications Commission ("FCC" or "Commission") rules which govern the Experimental Radio Service ("ERS").

Of most interest to satellite operators, the Commission has adopted limitations on the use of market studies in order to prevent abuses of the ERS licensing process. Each proposed market study will be subject to case-by-case review and will be granted where the study can be conducted on a non-interference basis with other services. Authorizations will be granted only for the time period sufficient to complete the planned study activity. The FCC will not permit the sale to the public of associated ERS equipment for the purpose of determining market demand for products, as it believes such information can be obtained from market surveys. The Commission fears that even limited equipment sales may result in initiation of a service which may then compete unfairly with fully licensed services, and which consumers may mistakenly regard as a fully-licensed, permanent service.

The Order also revises the ERS rules to permit applicants to apply for licenses of a term greater than two years, up to a maximum of five years. Licenses may then be renewed upon an adequate showing of need. Further, the Order adopts new rules to allow an applicant to apply for all of the fixed and mobile stations and all related multiple experiments in the proposed experimental system on a single license application and to permit the Office of Engineering and Technology to accept electronic signatures.

The revised rules allow applicants to apply for a blanket experimental license for all related facilities, manufacturers to conduct experiments under blanket nationwide licenses, and experimental licensees to change emission characteristics provided that their authorized maximum envelope is not exceeded. Although ERS licensees are no longer required to notify the Commission's Compliance and Information Bureau ("CIB") of their ERS operations, they are required to notify the FCC of the specific details (*i.e.*, location, number of units,



power emission designators) not specified in blanket licenses.

The rules adopted by the Order do not require construction permits for ERS systems. However, the new regulations require applicants to submit a notice of construction recognizing the applicant's own risk that the Commission may not grant the license. Finally, the FCC will coordinate with an ERS applicant to resolve objections an applicant may have to a partial grant of its application.

With regard to temporary experiments (*i.e.*, experimental programs not expected to last more than six months), the Order adopts rules to permit the Commission to issue a Special Temporary Authorization ("STA") rather than an experimental license for these type of experiments. The FCC will issue STAs on a short notice when the applicant sets forth compelling reasons why an STA must be granted expeditiously. However, STAs will be limited to a single, non-renewable authorization. STA holders who wish to continue operation beyond the expiration of the STA must file an application for a regular experimental license no later than 15 days prior to expiration of the STA (such a filing will continue the STA in force until the FCC takes final action on the application).

Finally, experimental use of public safety frequencies will be permitted upon a compelling showing that such use would best serve the public interest. In such applications, ERS applicants are required to perform frequency coordination with all public safety licensees in the ERS licensee's area of intended operations and according to specified technical thresholds. Also, the new ERS rules identify the following bands available for assignment for school and student authorizations: 27.23-27.28 MHz, 460-461 MHz, 462.525-467.475 MHz, 2402-2483.5 MHz and 10.0-10.5 MHz.