

garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(1) Except as provided in paragraph (c)(2) of this section, when a debtor's pay is subject to multiple withholding orders, unless otherwise provided by Federal law, withholding orders issued pursuant to this part shall have priority over other withholding orders that are served later in time.

(2) Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this part.

(3) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this part, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to a withholding order issued under this part shall be the lesser of:

(i) The amount calculated under paragraph (b) of this section, or

(ii) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(d) If the debtor owes more than one debt to the Department, the Secretary may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(e) An amount greater than that set forth in paragraphs (b) or (c) of this section may be withheld upon the written consent of the debtor.

(f) The employer shall promptly pay to the Department all amounts withheld in accordance with the withholding order issued pursuant to this part.

(g) The employer is not required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(h) Any assignment or allotment by an employee shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(i) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Secretary to discontinue wage withholding.

(j) The withholding order, SF-329B "Wage Garnishment Order," sent to the employer under § 32.6, requires the employer to commence wage

withholding on the first pay day after the employer receives the order. However, if the first pay day is within 10 days after receipt of the order, the employer may begin deductions on the second pay day.

(k) An employer may not discharge, refuse to employ, or take disciplinary action against a debtor a result of the issuance of a withholding order under this part.

§ 32.9 Financial hardship.

(a) A debtor whose wages are subject to a withholding order may, at any time, request a review by the Department of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting such a review under paragraph (a) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. The Secretary shall consider any information submitted in accordance with this part.

(c) If a financial hardship is found, the Secretary shall downwardly adjust, by an amount and for a period of time established by the Secretary, the amount garnished to reflect the debtor's financial condition. The Secretary will notify the employer of any adjustments to the amount to be withheld.

§ 32.10 Refunds.

(a) If the hearing official, pursuant to a hearing under this part, determines that a debt is not legally due and owing to the United States, the Secretary shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part shall not bear interest.

§ 32.11 Ending garnishment.

(a) Once the Department has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs assessed pursuant to and in accordance with part 30 of this title, the Secretary shall send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the Secretary shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 32.12 Right of action.

(a) The employer of a debtor subject to wage withholding pursuant to this

part shall pay to the Department as directed in a withholding order issued under this part.

(b) The Secretary may bring suit against an employer for any amount that the employer fails to withhold from wages owed and payable to a debtor in accordance with §§ 32.6 and 32.8, plus attorney's fees, costs, and, if applicable, punitive damages.

(c) A suit under this section may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of collection action" occurs when the Secretary has terminated collection action in accordance with part 30 of this title, or other applicable law or regulation.

(d) Notwithstanding deemed to occur if from a debtor whose paragraph (c) of this section, termination of the collection action will be a period of one (1) year the Department does not receive any payments wages were subject to a garnishment order issued under this part.

Dated: March 21, 2003.

Tommy G. Thompson,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73 and 76

[GC Docket No. 02-37; FCC 03-45]

Truthful Statements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its regulations relating to the submission of truthful information to the Commission. Under the former rule, Commission regulatees were prohibited, in any written statement submitted to the Commission, from making any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission. The new rule provides that specified persons covered by the rule may not, in proceedings covered by the rule, make written or oral statements of fact that are, in material respects, intentionally incorrect or misleading or make written statements of fact without a reasonable basis for believing that the statement is correct and not misleading.

DATES: Effective March 28, 2003.

FOR FURTHER INFORMATION CONTACT:

David S. Senzel, Office of General Counsel (202) 418-1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), GC Docket No. 02-37, adopted on March 4, 2003, and released March 10, 2003. The full text of the R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Copies of filings may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898. Filings may also be viewed on the Commission's Internet Web site using the Electronic Document Filing System (ECFS) at http://gulfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi.

Summary of Report and Order

1. In our Notice of Proposed Rulemaking, 67 FR 10658, March 8, 2002 we proposed to amend § 1.17 of our rules, 47 CFR 1.17, which relates to the submission of truthful statements to the Commission. The comments that we received were helpful in clarifying the appropriate scope of the rule, and by this Report and Order we amend the rule accordingly. We also make conforming amendments to 47 CFR 73.1015 and 47 CFR 76.939. The new rule is a clearer, more comprehensive, and more focused articulation of the standards for truthful statements than the old rule. The new rule will also enhance the effectiveness of our enforcement efforts.

2. The new rule broadens the category of persons subject to the rule by applying the requirement to: (1) Any holder of any Commission authorization, whether by application or by blanket authorization or other rule; (2) any person performing without Commission authorization an activity that requires Commission authorization; (3) any person that has received a citation or a letter of inquiry from the Commission or its staff, or is otherwise the subject of a Commission or staff investigation, including an informal investigation; (4) in a proceeding to amend the FM or Television Table of Allotments, any person filing an expression of interest, and (5) to the extent not already covered above, any cable operator or common carrier. The rule does not apply to attorneys or engineers who file statements in a representational capacity on behalf of

the entities specified. Attorneys and engineers are covered only to the extent that they are themselves the regulated entity.

3. The amended rule applies to investigatory proceedings and adjudicatory proceedings other than declaratory ruling proceedings. It does not apply to rulemakings generally but does apply to expressions of interest in proceedings to amend the FM or Television Table of Allotments and to tariff proceedings. The primary focus of the new rule is to enhance the effectiveness of adjudicatory and investigatory proceedings by providing for an expanded range of sanctions that can be imposed in those contexts. We do not see rulemakings of general applicability and declaratory rulings as raising enforcement issues of the same urgency. Additionally, while we expect parties to be truthful in rulemakings and declaratory ruling proceedings, we are mindful that such proceedings typically involve wide-ranging discussions of general policy rather than specific facts to be weighed in an adjudicatory manner. We do not wish to hinder full and robust public participation in such policymaking proceedings by encouraging collateral wrangling over the truthfulness of the parties' statements. Expressions of interest in proceedings to amend the FM or Television Table of Allotments, and tariff proceedings raise concerns that are distinguishable from those in rulemakings generally and will be subject to the rule.

4. The new rule prohibits written and oral statements of fact that are intentionally incorrect or misleading and written statements that are made without a reasonable basis for believing that the statement is correct and not misleading. With respect to both oral and written statements of fact, we follow our historical definition of misrepresentation and lack of candor, which defined as misconduct incorrect and misleading statements where there was an actual intent to deceive the Commission. We continue to believe that the rule barring such intentional deceptions, whether by affirmative misstatements or by omissions of material facts, should apply, in appropriate contexts, to both oral and written material statements of fact. We believe that in preparing written statements in fact-based adjudications and investigations, regulatees are on heightened notice that they must have a reasonable basis to believe that what they say is correct and not misleading. In these circumstances, we consider it justified to require that parties use due diligence in providing information that

is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.

5. Additionally, we wish to clarify that our reference to "materiality" and "Commission jurisdiction" in the rule is intended only to indicate that the representations and omissions we are concerned about are those material¹ to the issues before the Commission and that we do not intend the rule to apply to representations or omissions that are insignificant or extraneous to the issues.

6. We also take three subsidiary actions. First, our amendment of § 1.17 warrants making conforming amendments to 47 CFR 73.1015 and 47 CFR 76.939. Section 73.1015 is the counterpart of § 1.17 applicable specifically to the broadcast service. Section 76.939 applies specifically to cable operators. We see no purpose in having multiple sections contain redundant provisions. Accordingly, we amend §§ 73.1015 and 76.939 to cross reference § 1.17. Second, our revision of the rule makes unnecessary the language contained in the first paragraph of the former rule. The authority of the Commission to obtain information is set forth in various statutory provisions, for example, 47 U.S.C. 218, 308(b), 403, and does not need to be reiterated in the rule. Third, commenter James A. Kay, Jr. (Kay) attaches to his comments a copy of a petition for rulemaking filed March 5, 2002. In his petition, Kay proposes several modifications to the Commission's investigatory and hearing procedures. We have examined Kay's proposals and find them without merit. Several of Kay's proposals would unduly burden the Commission's investigatory and hearing functions. Other matters are already adequately addressed by existing law and policy. We will therefore deny the petition.

Final Regulatory Flexibility Certification

7. The Regulatory Flexibility Act of 1980, as amended (*see* 5 U.S.C. 601 *et*

¹ "Material" has been defined as "important," "more or less necessary," "having influence or effect." *See McDonald v. Murray*, 515 P.2d 151, 152 (Wash. 1973). Additionally, a "material representation" has been defined as one "relating to matter which is so substantial or important as to influence the party to whom it is made." *See In the Matter of Mark E. Wagner*, 744 N.E.2d 418, 421 (Ind. 2001).

seq.)² requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless we certify that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). We believe that the rule we adopt today will not have a significant economic impact on a substantial number of small entities.

8. In expanding the scope of 47 CFR 1.17, we are merely requiring persons subject to the Commission’s regulatory jurisdiction to submit information that is correct and not misleading. The revised rule thus does not impose any significant compliance burden on persons dealing with the Commission, including small entities, or otherwise affect the rights of persons participating in Commission proceedings. The revised rule simply enables the Commission to impose sanctions more effectively in those instances where people intentionally or negligently submit incorrect or misleading information. There is thus no reason to believe that operation of the revised rule would impose significant costs on parties to Commission proceedings.

9. Accordingly, we certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The Commission shall send a copy of this Report and Order, including this certification, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 605(b).

10. 47 CFR. 1.17, 73.1015, and 76.939 are amended as set forth in the rule changes.

11. The Commission’s Consumer Information 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.

12. The Petition for Rulemaking, filed March 5, 2002, by James A. Kay, Jr. is *denied*.

List of Subjects in 47 CFR Parts 1, 73, and 76

Administrative practice and procedure, Radio, Telecommunications, Television.

² See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 73 and 76 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

■ 2. Section 1.17 is revised to read as follows:

§ 1.17 Truthful and accurate statements to the Commission.

(a) In any investigatory or adjudicatory matter within the Commission’s jurisdiction (including, but not limited to, any informal adjudication or informal investigation but excluding any declaratory ruling proceeding) and in any proceeding to amend the FM or Television Table of Allotments (with respect to expressions of interest) or any tariff proceeding, no person subject to this rule shall;

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

(b) For purpose of paragraph (a) of this section, “persons subject to this rule” shall mean the following:

(1) Any applicant for any Commission authorization;

(2) Any holder of any Commission authorization, whether by application or by blanket authorization or other rule;

(3) Any person performing without Commission authorization an activity that requires Commission authorization;

(4) Any person that has received a citation or a letter of inquiry from the Commission or its staff, or is otherwise the subject of a Commission or staff investigation, including an informal investigation;

(5) In a proceeding to amend the FM or Television Table of Allotments, any

person filing an expression of interest; and

(6) To the extent not already covered in this paragraph (b), any cable operator or common carrier.

PART 73—RADIO BROADCAST SERVICES

■ 3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336 unless otherwise noted.

■ 4. Section 73.1015 is revised to read as follows:

§ 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission, or, in the case of a proceeding to amend the FM or Television Table of Allotments, require from any person filing an expression of interest, written statements of fact relevant to that allotment proceeding. Any such statements of fact are subject to the provisions of § 1.17 of this chapter.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 5. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303A, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544A, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, AND 573 unless otherwise noted.

■ 6. Section 76.939 is revised to read as follows:

§ 76.939 Truthful written statements and responses to requests of franchising authority.

Cable operators shall comply with franchising authorities’ and the Commission’s requests for information, orders, and decisions. Any information submitted to a franchising authority or the Commission in making a rate determination pursuant to an FCC Form 393 (and/or FCC Forms 1200/1205) filing or a cost-of-service showing is subject to the provisions of § 1.17 of this chapter.

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