

APPENDIX ??

Appeals Process

Throughout the application review and frequency allotment process applicants are given opportunities to appeal decisions that have caused the rejection of their application. The appeal process has two levels: the RPC and FCC. In the event that an appeal reaches the second level, the FCC, the FCC decision will be final and binding on all parties. The appeal process will take effect upon plan approval by the FCC. Prior to that approval issues will be resolved by the RPC during the planning process.

Introduction

In order to ensure that the appeal process is open and understandable to the public, the Region 33 Planning Committee has developed this procedure. Those involved in the appeal process can expect the Committee and its members to follow the procedures (as may be amended from time to time). Where any matter arises during the course of an appeal that is not dealt with in this document, the Committee will do whatever is necessary to enable it to adjudicate fairly, effectively and completely on the appeal. In addition, the Committee may dispense with compliance with any part or all of a particular procedure where it is appropriate in the circumstances. As the Committee gains experience, it will refine and, if necessary, change its policies. Any changes made to the procedure will require a modification to the Region 33 Plan and will be made available to the public.

The Region 33 Committee will make every effort to process appeals in a timely fashion and issue decisions expeditiously.

Appeals Subcommittee

The Appeals subcommittee will be formed when an appeal has been properly filed and accepted by the Region 33 chair. When an appeal is scheduled for hearing by the Appeals subcommittee, the chair will be determined as follows:

- When the chair of the RPC is on the sub-committee, he/she will be the chair;
- if the chair of the RPC is not on the sub-committee but the vice-chair is, the vice-chair will be the chair; and
- if neither the chair nor the vice-chair is on the subcommittee, the RPC will designate one of the members to be the chair.

Withdrawal or Disqualification of a Appeals Subcommittee Member for Bias

Where the chair or a Appeals subcommittee member becomes aware of any facts that would lead an informed person, viewing the matter reasonably and practically, to conclude that a member, whether consciously or unconsciously, would not decide a matter fairly, the member will be prohibited from hearing the

appeal unless consent is obtained from all parties to continue. In addition, any party to an appeal may challenge a member on the basis of real or a reasonable apprehension of bias.

Correspondence (Communicating) with the Appeals Sub committee

To ensure the appeal process is kept open and fair to the participants, any correspondence to the Region 33 Appeals subcommittee must be sent to the chair and be copied to all other subcommittee members and other parties to the appeal, if applicable.

Subcommittee members will not contact a party on any matter relevant to the merits of the appeal, unless that member puts all other parties on notice and gives them an opportunity to participate. The appeal process is public in nature and all meetings regarding the appeal will be open to the public.

What can be Appealed

The Appeals subcommittee hears appeals from a determination or allocation and shall include the following: i.e. number of channels assigned, ranking in the assignment matrix, interference, or any other criteria that the region shall establish.

Who can Appeal

An official of the entity who filed the original application to the Region Planning Committee must be the person who files the appeal on behalf of the entity.

How to Appeal

A notice of appeal must be served upon the Region Planning Committee. The notice of appeal may be “delivered” by mail, courier, or hand to the office of the Chair and members of the Region Planning Committee as listed in the Official Membership List. The Committee will also accept a notice of appeal by facsimile to the Chair and Secretary with the original copy of the notice of appeal served as indicated above.

Certain things must be included in a notice of appeal for it to be accepted. The notice of appeal **must** include:

- The name and address of the appellant;
- the name of the person, if any, making the request for an appeal on behalf of the appellant;
- the address for service of the appellant;
- the grounds for appeal (a detailed explanation of the appellant’s objections to the determination and describe errors in the decision);
- a description of the relief requested (what do you want the Committee to order at the end of the appeal);
- the signature of the appellant or the appellant’s representative.

Time limit to Appeal

To appeal a determination or allocation the entity that is subject to the determination must deliver a notice of appeal **within three weeks** after receiving the decision. If a notice of appeal is not delivered within the time required, the right to an appeal is lost. However, the RPC is allowed to extend the deadline, either before or after its expiration date based upon a majority vote of the RPC.

Extension

The RPC has the discretion to extend the time to appeal either before or after the three-week deadline. A request for an extension should be made to the RPC, in writing, and include the reasons for the delay in filing the notice of appeal and any other reasons which the requester believes support the granting of an extension of time to file the appeal. A request for an extension should accompany the notice of appeal.

In deciding whether to grant an extension, the RPC will consider whether fairness requires an extension. The Committee will take into account the length of the delay, the adequacy of the reasons for the delay, the prejudice to those affected by the delay and any impacts that may result from an extension. Other factors not identified could be relevant depending on the circumstances of the particular case.

Rejection of a notice of Appeal

The Region Planning Committee may reject a notice of appeal if:

- it is determined that the appellant does not have standing to appeal; or
- the Committee does not have jurisdiction over the subject matter or the remedy sought.

Before a notice of appeal is rejected, the Region Planning Committee will inform the appellant of this in writing, with reasons, and give the appellant a three-week opportunity to make submissions and any potential parties with an opportunity to respond.

Adding parties to the Appeal

In addition to the parties mentioned above, the Appeals subcommittee has the discretion to add any other person who may be “affected” by the appeal as a party to the appeal. Anyone wanting to obtain party status should make a written request to the Appeals subcommittee as early as possible. The written request should contain the following information:

- The name, address, telephone and fax number, if any, of the person submitting the request;
- a detailed description of how the person is “affected” by the notice of appeal; and
- the reasons why the person should be included in the appeal; and

- the signature of the person submitting the request.

Intervener Status

The Appeals subcommittee may also invite or permit an individual to participate in a hearing as an intervener. Interveners are generally individuals or groups that do not meet the criteria to become a party (i.e. “may be affected by the appeal”) but have sufficient interest in, or some relevant expertise or view in relation to the subject matter of the appeal. Individuals wanting to take part in an appeal as an intervener should send a written request to the Appeals sub-committee. The written request should contain the following information:

- The name, address, telephone and fax number, if any, of the person submitting the request;
- a detailed description of how the person has interest in the appeal; and
- evidence that the person has relevant expertise that would assist in the adjudication of the appeal; and
- the signature of the person submitting the request.

Prior to inviting or permitting a person to participate in a proceeding as an intervener, or deciding on the extent of that participation, the Appeals subcommittee will provide all parties with an opportunity to make representations if they wish to do so.

Type of Appeal (written or oral) hearing

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. The Appeals subcommittee will determine the appropriate type of appeal after a complete notice of appeal has been received. The subcommittee will normally conduct an oral hearing although it may order that a hearing proceed by way of written submissions in certain cases. If written submissions are being considered, input from all of the parties.

Burden of Proof

The general rule is that the burden or responsibility for proving a fact is on the person who asserts it.

Notification of Expert Evidence

The Appeals subcommittee requires any party that intends to present expert evidence at a hearing to provide the subcommittee, and all other parties to the appeal, with reasonable advance notice that an expert will be called to give an opinion. The notice should include a brief statement of the expert’s qualifications and areas of expertise. If a party intends to produce, at a hearing, a written statement or report prepared by an expert, a copy of the statement or report should be provided to the sub-committee and all parties to the appeal within a reasonable time before the statement or report is given in evidence. Unless there are compelling reasons for later admission, expert reports should be distributed 30 days prior to the hearing date.

Documents

If a party will be referring to a document that was not provided to the Appeals subcommittee and all parties prior to the hearing, sufficient copies of the document must be brought to the hearing for the sub-committee and all other parties to review.

Appealing the Appeals Subcommittee's Decision

If a party is not satisfied with the decision of the Region's Appeals subcommittee's decision, he or she can appeal that decision to the 700 MHz National Planning Oversight Committee or the FCC.