Adoption of this proposal would remove a regulatory impediment to the use of directional antennas employing new, emerging technologies by Commission licensees.

DATES: Comments are due on or before April 26, 1996. Reply comments are due on or before May 13, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael J. Marcus, Office of Engineering and Technology, (202) 418–2418.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in ET Docket No. 96–35, adopted February 29, 1996, and released March 14, 1996. The complete NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

Summary of NPRM

1. For those frequency bands listed in 47 CFR Sections 74.536, 74.641, 78.105, and 101.115 that have only a minimum antenna gain requirement, the Commission proposes to allow directional antennas to comply with requirements for either minimum antenna gain or maximum beamwidth. The Commission does not propose to change any of the existing requirements with respect to sidelobe suppression because it believes that these requirements, which are designed to reduce potential interference, can readily be met by both conventional and new antenna technologies. The Commission proposes to convert the present antenna gain requirements to the comparable requirements for antenna beamwidths based on two assumptions: (1) A parabolic (''dish'') antenna with an efficiency of 55% is used as a reference; and (2) the illumination function taper value is 70. Table I depicts the existing gain requirements and the new corresponding beamwidth requirements for bands that do not have an existing maximum beamwidth option:

TABLE I.—ANTENNA GAIN AND EQUIVALENT BEAM

Gain (dBi)	Equivalent beamwidth (degrees)
34	3.5
36	2.7
38	2.2

This technical equivalency is independent of the frequency bands.

2. The Commission notes that these new types of antennas may differ somewhat from conventional antennas in the exact shape of the mainlobe. Thus, even with sidelobe suppression required by the present rules, the beam shape for a planar array antenna may be different than for a dish antenna. While the Commission does not believe that these differences would have a significant impact on spectrum efficiency, it seeks comment on whether such differences might have an impact on coordination. The Commission proposes to address this problem by requiring the coordination process to treat all antennas as if they had the mainlobe shape and total gain of a conventional parabolic dish antenna. However, the Commission invites comments on this approach, and encourages alternative proposals.

List of Subjects

47 CFR Part 74

Radio broadcasting, Television broadcasting.

47 CFR Part 78

Cable television, Communications equipment, Radio.

47 CFR Part 101

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–6938 Filed 3–21–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1000 through 1149

[STB Ex Parte No. 527]

Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Under new 49 U.S.C. 10704(d), enacted as part of section 102(a) of the ICC Termination Act of 1995 (ICCTA), the Surface Transportation Board (Board) is required to establish procedures to expedite the handling of challenges to the reasonableness of railroad rates and of proceedings involving the granting or revocation of railroad exemptions. Such procedures are to be promulgated by October 1, 1996. The Board solicits comments on how the existing regulations at 49 CFR Parts 1000 through 1149 can be modified to expedite the handling of rate reasonableness and exemption/revocation proceedings.

DATES: Comments are due on May 6, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 527 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., N.W., Washington, DC 20423–0001. Parties are encouraged to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 927–7312. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: New 49 U.S.C. 10704(d), which was enacted as part of section 102(a) of the ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104–88, 109 Stat. 803, provides that:

> Within 9 months after the effective date of the ICC Termination Act of 1995, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates. The procedures shall include appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings and exemption and revocation proceedings, including appropriate sanctions for such delay, and for ensuring prompt disposition of motions and interlocutory administrative appeals.

New section 10704(d) is one of several specific provisions designed to implement the new rail transportation policy (RTP) ''to provide for the expeditious handling and resolution of all [rail related] proceedings.'' New 49 U.S.C. 10101(15). Other such provisions adopted by the ICCTA include new 49 U.S.C. 10704(c), which requires the Board to decide the reasonableness of a challenged rate within 9 months after the close of the record if the determination is based upon a stand-alone cost presentation,[1] and within 6 months if it is based upon a simplified methodology.[2] In addition, any proceeding to grant or revoke an exemption ''shall be completed within 9 months after it is begun.'' New 49 U.S.C. 10502 (b) and (d).

These various provisions were included in the ICCTA, in part, in response to concerns raised by parties that litigate before the Board. We hope, and expect, that the parties that raised these concerns will now participate in a constructive way to assist us in establishing appropriate procedures to expedite cases. Accordingly, we institute this proceeding to examine ways in which we can comply with the new RTP and, in particular, the specific requirements of new section 10704(d).[3]

New section 10704(d) addresses the need to expedite two distinct types of proceedings—rate reasonableness and exemption/revocation cases. We note that, whereas the decisional time limits in rate reasonableness cases run from the date on which the administrative record is closed, in exemption/revocation cases they run from the date on which the proceeding is instituted. Therefore, any delay in the record-building stage of an exemption/revocation proceeding caused by a protracted discovery or evidentiary process can hinder a party's ability to effectively present its case within the allotted time. For that reason, special discovery and evidentiary procedures might be needed for exemption/revocation proceedings.

The existing regulations that govern the filing and processing of rate reasonableness and exemption/revocation cases are contained in the *Rules of Practice* at 49 CFR 1000 through 1129 (*Rules of General Applicability*), and at 49 CFR 1130 through 1149 (*Rate Procedures*). These regulations provide a starting point in the search for new ways of expediting cases. We recognize that some provisions of the existing regulations have been rendered obsolete by the ICCTA and are now in the process of being eliminated. Moreover, certain provisions will require minor conforming changes, such as updating references to statutory provisions or replacing the reference to the ICC with the Surface Transportation Board. Those changes, which do not materially affect the way in which a case is argued or a decision reached, can be handled ministerially without comment from the public. In this proceeding, by contrast, we are focusing on those procedures (both codified and uncodified) that have a direct and significant impact on the time devoted to developing the administrative record and the adequacy of that record.

Discovery

In any proceeding in which discovery is needed to develop an adequate evidentiary record, the discovery process can have a substantial impact on how quickly the case proceeds. We recognize that the evidentiary process in the larger rate reasonableness cases where stand-alone cost is used—such as challenges to the rate charged for large volume movements of coal—can involve extensive discovery. In these cases, discovery disputes often arise as each party attempts to acquire the data needed to present its case fully. The number of such disputes and how they are handled by the parties (and by the decisional body) can be a major factor in protracting these proceedings.

In exemption/revocation proceedings, the development of an adequate factual record can also be a substantial undertaking. With the new statutory deadlines, it is imperative that the discovery process be structured so as to enable discovery to be conducted fully and completed quickly.[4] It is equally important that discovery procedures not be abused so as to limit an opposing party's ability to effectively participate in a proceeding within the time allotted.

We solicit comments, particularly from parties that have been involved in litigating cases, as to how we can speed up the discovery process, how discovery disputes can be avoided, and how we can more effectively resolve the discovery disputes that require resolution by the Board. In particular, parties should suggest changes to the discovery regulations (49 CFR 1114.21–1114.31) that they believe would expedite the processing of cases.

Some particular areas on which commenters may wish to focus include the need for Board approval prior to discovery; the use and role of administrative law judges (ALJs) in handling discovery matters in major rate cases; and the best way to handle interlocutory appeals of discovery orders.

The existing discovery rules, for example, require prior Board approval for all discovery other than interrogatories and requests for admissions. See 49 CFR 1114.21(b)(2). The discovery rules also provide for the filing of certain discovery documents with the Board, even though the documents are not ''evidence,'' and will not be evidence unless and until they are filed in an evidentiary submission. See 49 CFR 1114.24(h). Every unnecessary filing that is required to be made with the Board, or processed by the Board, slows down the process for the parties and impedes the Board in its ability to complete its cases quickly.[5] Therefore, we ask commenters to consider ways in which discovery can proceed without the need for any Board action or involvement, at least until a conflict arises.

A difficult issue in major rate cases involves disputes over discovery. On the one hand, we must assure that

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[1] *See Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp.* v. *United States*, 812 F.2d 1444 (3d Cir. 1987) (adopting constrained market pricing, including stand-alone cost, as a test for maximum reasonableness of coal rates).

[2] New 49 U.S.C. 10701(d)(3) requires the Board ''to establish [within 1 year] a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly.'' In *Rate Guidelines—Non-Coal Proceedings*, Ex Parte No. 347 (Sub-No. 2) (ICC Dec. 1, 1995), 60 FR 62256 (1995), simplified guidelines have been proposed for public comment.

[3] In *New Procedures in Rail Exemption Revocation Proceedings*, Ex Parte No. 400 (Sub-No. 4) (ICC Apr. 28, 1995), the Interstate Commerce Commission (ICC) solicited comments on a proposal by the Railway Labor Executives' Association to establish formal procedural rules to govern petitions to revoke exemptions. In a separate decision served today, that proceeding is being discontinued because the concerns that were to be addressed there can and should be subsumed into this broader proceeding. The comments filed in that proceeding will be incorporated into the record in this proceeding and need not be refiled.

[4] In some cases, exemptions have been granted based on the evidence filed with the petition and without receiving comment from other interested parties. In such cases, it may be appropriate to develop procedures that would permit a party wishing to petition to revoke the exemption to conduct discovery prior to the filing of a petition for revocation.

[5] Similar internal paperwork burdens result from the practice of permitting emergency filings by facsimile (FAX) [See 54 FR 52587 (Dec. 22, 1989)]. Although the concept of FAX filings was well conceived, in practice it burdens the Secretary's Office, by requiring it to process each FAX, and then to process, for a second time, the same document when it is submitted in hard copy. As the existing regulations already contemplate the use of overnight delivery services (see 49 CFR 1004.6), we are considering restricting the use of FAXes in the future. Commenters may wish to address this issue.

parties obtain the information they need to make their case; on the other hand, we are concerned that discovery not become overreaching and unduly burdensome. Also, we are directed by statute to assure that the process can be completed in a timely fashion. Thus, we seek a process that will quickly produce proper discovery rulings in the first instance, and that will then provide only narrow grounds for interlocutory appeals.

In the past, we have used ALJs initially to resolve discovery disputes in significant cases. Given the highly technical issues raised in major rate cases, and the need to curtail the appellate process, our preliminary view is that the Board's staff—which is thoroughly familiar with the practical application of the agency's maximum rate procedures—should be involved in the resolution of discovery disputes from the outset. Commenters should address how we can best utilize the talents of an ALJ and/or our own staff to produce initial discovery rulings that will balance the burdens of production with the needs for information.[6]

New section 10704(d) directs the Board to dispose of motions and interlocutory administrative appeals promptly. Many of these motions and interlocutory appeals concern discovery. The ICC was not always consistent in its handling of, for example, interlocutory appeals. Sometimes, it treated interlocutory appeals under the rules governing appellate procedures found at 49 CFR 1115. Sometimes, it treated them under its regulations governing interlocutory appeals from hearing officers found at 49 CFR 1113.5. Assuming that we can devise procedures that will advance prompt and proper rulings in the first instance, we would be inclined to adopt interlocutory appeals procedures along the lines of those found at 49 CFR 1113.5, which permit interlocutory appeals only in extremely narrow circumstances. We would also be inclined to provide that such matters will be handled by the entire Board, rather than the Chairman, in order to limit the number of appellate levels available. Commenters should address this issue as well.[7]

Evidentiary Phase

The number and timing of evidentiary filings can also greatly affect the length of a rate reasonableness proceeding. For example, in a rate case we can proceed with the market dominance and rate reasonableness phases sequentially or simultaneously. In some cases in the past, the ICC conducted the two phases of the case sequentially; only if it found market dominance did the ICC schedule the filing of rate reasonableness evidence.[8] More recently, the ICC provided for the market dominance and rate reasonableness evidence to be filed simultaneously.

The sequential procedure can extend the time needed to close the record, but has the advantage of sparing the parties the expense associated with presenting evidence on the reasonableness of a rate in cases where the carrier is found not to possess market dominance. The simultaneous procedure allows faster completion of the record, but always requires the parties to incur the expense of filing evidence on the reasonableness of a rate. We ask for comments on whether to adopt a general policy that would govern all cases, or whether we should continue to decide on a case-by-case basis whether to bifurcate the two phases of a rate proceeding.[9]

Different evidentiary considerations apply to exemption and revocation proceedings. Exemption or revocation requests may be very particularized (i.e., for an individual transaction) or quite broad (for an entire class of traffic or transactions). Generally, the broader the request, the more extensive and complicated the evidentiary record that needs to be developed. However, even a narrowly drawn individual exemption petition can require a lengthy evidentiary process. Exemption petitions involving construction or abandonment activity, for example, often require extensive environmental analyses (either an environmental assessment or environmental impact statement). In such cases, it can be difficult to complete the environmental review within 9 months. Comments are solicited on how proceedings requiring extensive environmental analysis can best be accommodated in an exemption context. One approach may be to issue an exemption that is conditional pending completion of the environmental analysis.

More generally, to speed the exemption/revocation process in all cases, it would seem that any party seeking either an exemption or a revocation of an exemption should be required to provide all of its supporting information at the time it submits its exemption or revocation request. We welcome suggestions on fashioning appropriate procedural schedules, including how much time should be allowed for the filing of reply and rebuttal evidence. For those cases in which the public should have an opportunity to comment on a request for exemption or revocation, we also welcome suggestions on how to structure our procedures to obtain the participation of potentially interested persons in a prompt and effective manner.

Another issue that affects how much time is needed to complete the administrative record is the timing of the briefing schedule in those cases where briefing is needed. A simultaneous briefing schedule proceeds more quickly than sequential submissions of opening, reply and rebuttal briefs. Sequential briefing, however, better focuses the issues and allows parties to directly address and respond to those issues that are considered important by the opposing party. We request comments as to whether we should adopt a general policy on simultaneous or sequential briefing in rate reasonableness and exemption/revocation proceedings, or whether we should make that decision on a case-by-case basis. We also request comments on whether page limits generally should be imposed and, if so, what the page limit should be.

Sanctions

New section 10704(d) specifically calls for ''sanctions to be imposed for dilatory tactics in rate cases and revocation proceedings.'' [10] H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 172 (1995), *reprinted in* 1996 U.S. Code Cong. & Admin. News 856. The current sanctions for failure to respond to discovery are found at 49 CFR 1114.31, and the current sanctions for failure to comply with the procedural schedule are found at 49 CFR 1112.3. Parties should review these provisions and comment on whether there are other sanctions, such as monetary sanctions or other sanctions used by the courts,

[6] For example, it may be that discovery in major rate cases should be handled directly by the Board; that the ALJ handling discovery should be directed to include Board staff in all discovery conferences; or that the ALJ should only prepare a recommended decision on discovery.

[7] We also, of course, seek comment on how we should handle motions and interlocutory appeals related to matters other than discovery.

[8] In the new law, as in the law prior to the ICCTA, a prerequisite to our exercise of jurisdiction over the reasonableness of a rail rate is the requirement that a rail carrier have market dominance over the transportation at issue. New 49 U.S.C. 10707.

[9] One option would be not to bifurcate cases unless all parties to the proceeding favored bifurcation.

[10] The Board has general powers to carry out the provisions of the statute, including the imposition of sanctions. New 49 U.S.C. 721.

that would be more appropriate and effective.

Other Issues

Finally, we welcome any other suggestions on ways to improve the processing of rate reasonableness and exemption/revocation cases.[11] In general, we expect to expedite the record-building stage of cases by looking with disfavor on requests to extend the procedural schedule. We intend to deny all requests for extensions of time that fail to demonstrate a compelling need for additional time.

We tentatively conclude that the proposed action will not have a substantial adverse impact on a significant number of small entities. In any event, the impact on small entities should be beneficial because it should allow parties to more quickly avail themselves of their statutory right to institute proceedings before the Board and to have the Board expedite the processing of those proceedings.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 8, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–6986 Filed 3–21–96; 8:45 am]

BILLING CODE 4915–00–P

[11] In several recent cases, we have required that pleadings be filed in paper form and on computer disk in WordPerfect format. We have also required that spreadsheets be filed in Lotus 1–2–3. Having evidence on electronic media in a format that is familiar to the staff has been quite beneficial as we analyze the record. We intend to require that evidence be filed on computer disks in the future.

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49 CFR Parts 1002 and 1150

[STB Ex Parte No. 529]

Class Exemption for Acquisition or Operation of Rail Lines by Class III Rail Carriers Under 49 U.S.C. 10902

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) enacted a new provision for Class II and Class III rail carrier acquisitions or operations of rail lines. Pursuant to the request by the Regional Railroads of America (RRA) and The American Short Line Railroad Association (ASLRA), the Surface Transportation Board (Board) is proposing to institute a new class exemption procedure to apply to transactions in which Class III rail carriers seek to acquire additional rail properties. As proposed, the class exemption would be similar to the Board's existing rules for noncarrier transactions. Because the new statute precludes the Board from imposing labor protective conditions on Class III carriers receiving a certificate under 49 U.S.C. 10902, labor protection will not be provided under the proposed class exemption.

DATES: Comments are due on April 22, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 529 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, abolished the Interstate Commerce Commission (ICC). Responsibility for administering certain regulation over the rail industry was vested in a new Surface Transportation Board (Board) within the U.S. Department of Transportation. *See* ICCTA Section 101 (abolition of the ICC). *See also* new 49 U.S.C. 701(a) (establishment of Board), as enacted by ICCTA Section 201(a). The transfer took effect on January 1, 1996.

In the ICCTA, Congress established a new provision—49 U.S.C. 10902—that applies to the acquisition or operation of additional rail lines by Class II or Class III railroads. As enacted, subsection 10902(c) requires the Board, after application by a Class II or III rail carrier, to issue a certificate authorizing the transaction ''unless the Board finds that such activities are inconsistent with the public convenience and necessity.'' The new provision requires Class II rail carriers to provide adversely affected railroad employees a maximum of 1 year of severance pay—equal to the employee's earnings during the 12 months preceding the application filing date. The Board may not require labor protection from a Class III rail carrier. *See* 49 U.S.C. 10902(d). The Board may approve the requested certificate as filed or may include conditions (other than labor protection conditions) the Board finds necessary in the public interest. *See* 49 U.S.C. 10902(c).

The criteria for approving a transaction under section 10902 are substantially the same as those found in section 10901, which requires that the Board approve the construction of rail lines and noncarrier acquisitions and operations. Noncarrier transactions under section 10901 are subject to a class exemption found in 49 CFR 1150.31 through 1150.35. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985), 4 I.C.C.2d 309 (1988), 4 I.C.C.2d 822 (1988). Those rules have been carried forward by section 204 of the ICCTA as rules of the Board. Petitioners assert that the 10901 class exemption for noncarriers is beneficial in that it allows certainty in the timing of closing line sales, which is of critical importance to the financing of those transactions.

RRA and ASLRA submit that a similar class exemption should apply to transactions by a Class III rail carrier under section 10902.[1] They contend that such a class exemption would not alter the competitive balance between rail carriers and shippers and thus the covered transactions would not result in an abuse of market power. Petitioners assert that the exemption will conform to the national rail transportation policy in 49 U.S.C. 10101, continue sound public policy, and make efficient use of the Board's limited resources.

Petitioners' proposed rules, unlike those adopted by the ICC establishing the class exemption for transactions under section 10901, do not distinguish between small and large transactions. We believe that it is necessary for Class III railroads that wish to make more significant acquisitions of rail line—acquisitions that would produce projected revenues following the acquisition that would result in the applicant qualifying as a Class II or I railroad—to provide additional information in their filings. We also believe that these exemptions should not become effective until 21 days after they are filed, rather than in 7 days as is the case under the proposed rules for the acquisition of smaller lines. These requirements are similar to those currently imposed by the rules for the class exemption from section 10901 at 49 CFR 1150.35.[2]

We are also proposing that verified notices of exemption and caption summaries be submitted on diskette in

[1] RRA and ASLRA indicate that they intend to file subsequent rulemaking requests for a class exemptions governing Class II acquisitions under section 10902 and a class exemption for Class III consolidations or transactions under section 11323.

[2] We note that our proposal for differing requirements depending on whether the transaction would result in the applicant's becoming a Class II or I railroad is consistent with Congressional intent as evidenced by the different handling under the ICCTA, including section 10902, of many transactions according to the class of railroad involved.