

their own choosing so long as that person is a "neutral" as defined in 5 U.S.C. 581.

(2) The appointment of a settlement judge in a particular case is subject to the approval of all the applicants in the proceeding. See 5 U.S.C. 583(b).

(3) The Commission's Administrative Law Judges are eligible to act as settlement judges, except that an Administrative Law Judge will not be appointed as a settlement judge in any case in which the Administrative Law Judge also acts as the presiding officer.

(4) Other members of the Commission's staff who qualify as neutrals may be appointed as settlement judges, except that staff members whose duties include drafting, review, and/or recommendations in adjudicatory matters pending before the Commission shall not be appointed as settlement judges.

(d) The settlement judge shall have the authority to require applicants to submit their Standardized Integration Statements and/or their written direct cases for review. The settlement judge may also meet with the applicants and/or their counsel, individually and/or at joint conferences, to discuss their cases and the cases of their competitors. All such meetings will be off-the-record, and the settlement judge may express an opinion as to the relative comparative standing of the applicants and recommend possible means to resolve the proceeding by settlement. The proceedings before the settlement judge shall be subject to the confidentiality provisions of 5 U.S.C. 574. Moreover, no statements, offers of settlement, representations or concessions of the parties or opinions expressed by the settlement judge will be admissible as evidence in any Commission licensing proceeding.

[56 FR 793, Jan. 9, 1991, as amended at 62 FR 4171, Jan. 29, 1997]

§ 1.245 Disqualification of presiding officer.

(a) In the event that a presiding officer deems himself disqualified and desires to withdraw from the case, he shall notify the Commission of his withdrawal at least 7 days prior to the date set for hearing.

(b) Any party may request the presiding officer to withdraw on the

grounds of personal bias or other disqualification.

(1) The person seeking disqualification shall file with the presiding officer an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. Such affidavit shall be filed not later than 5 days before the commencement of the hearing unless, for good cause shown, additional time is necessary.

(2) The presiding officer may file a response to the affidavit; and if he believes himself not disqualified, shall so rule and proceed with the hearing.

(3) The person seeking disqualification may appeal a ruling of disqualification, and, in that event, shall do so at the time the ruling is made. Unless an appeal of the ruling is filed at this time, the right to request withdrawal of the presiding officer shall be deemed waived.

(4) If an appeal of the ruling is filed, the presiding officer shall certify the question, together with the affidavit and any response filed in connection therewith, to the Commission. The hearing shall be suspended pending a ruling on the question by the Commission.

(5) The Commission may rule on the question without hearing, or it may require testimony or argument on the issues raised.

(6) The affidavit, response, testimony or argument thereon, and the Commission's decision shall be part of the record in the case.

(5 U.S.C. 556)

[28 FR 12425, Nov. 22, 1963, as amended at 55 FR 36641, Sept. 6, 1990; 62 FR 4171, Jan. 29, 1997]

PREHEARING PROCEDURES

§ 1.246 Admission of facts and genuineness of documents.

(a) Within 20 days after the time for filing a notice of appearance has expired; or within 20 days after the release of an order adding parties to the proceeding (see §§1.223 and 1.227) or changing the issues (see §1.229); or within such shorter or longer time as the presiding officer may allow on motion or notice, a party may serve upon any other party a written request for the admission by the latter of the