

§ 1.201

necessary to the maintenance or conduct of an existing service or unless the Commission affirmatively finds that the public interest requires that the grant remain in effect, in which event the Commission shall authorize the applicant to utilize the facilities or authorization in question pending the Commission's decision after hearing.

(Sec. 7, 66 Stat. 715, as amended. See, in particular, sec. 4 (a) and (d), 74 Stat. 889, 892; 47 U.S.C. 309)

[28 FR 12415, Nov. 22, 1963, as amended at 28 FR 14503, Dec. 31, 1963]

Subpart B—Hearing Proceedings

SOURCE: 28 FR 12425, Nov. 22, 1963, unless otherwise noted.

GENERAL

§ 1.201 Scope.

This subpart shall be applicable to the following cases which have been designated for hearing:

(a) Adjudication (as defined by the Administrative Procedure Act); and

(b) Rule making proceedings which are required by law to be made on the record after opportunity for a Commission hearing.

NOTE: For special provisions relating to AM broadcast station applications involving other North American countries see § 73.3570.

[28 FR 12425, Nov. 22, 1963, as amended at 51 FR 32088, Sept. 9, 1986]

§ 1.202 Official reporter; transcript.

The Commission will designate from time to time an official reporter for the recording and transcribing of hearing proceedings. The transcript of the testimony taken, or argument had, at any hearing will not be furnished by the Commission, but will be open to inspection under § 0.453(a)(1) of this chapter. Copies of such transcript, if desired, may be obtained from the official reporter upon payment of the charges therefor.

(5 U.S.C. 556)

[32 FR 20861, Dec. 28, 1967]

§ 1.203 The record.

The transcript of testimony and exhibits, together with all papers and re-

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quests filed in the proceeding, shall constitute the exclusive record for decision. Where any decision rests on official notice of a material fact not appearing in the record, any party shall on timely request be afforded an opportunity to show the contrary.

(5 U.S.C. 556)

§ 1.204 Pleadings; definition.

As used in this subpart, the term *pleading* means any written notice, motion, petition, request, opposition, reply, brief, proposed findings, exceptions, memorandum of law, or other paper filed with the Commission in a hearing proceeding. It does not include exhibits or documents offered in evidence. See § 1.356.

[29 FR 8219, June 30, 1964]

§ 1.205 Continuances and extensions.

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time may be granted by the Commission or the presiding officer upon motion for good cause shown, unless the time for performance or filing is limited by statute.

§ 1.207 Interlocutory matters, reconsideration and review; cross references.

(a) Rules governing interlocutory pleadings in hearing proceedings are set forth in §§ 1.291 through 1.298.

(b) Rules governing appeal from rulings made by the presiding officer are set forth as §§ 1.301 and 1.302.

(c) Rules governing the reconsideration and review of actions taken pursuant to delegated authority, and the reconsideration of actions taken by the Commission, are set forth in §§ 1.101 through 1.120.

[28 FR 12425, Nov. 22, 1963, as amended at 29 FR 6443, May 16, 1964; 36 FR 19439, Oct. 6, 1971]

§ 1.209 Identification of responsible officer in caption to pleading.

Each pleading filed in a hearing proceeding shall indicate in its caption whether it is to be acted upon by the Commission, the Chief Administrative Law Judge, or the presiding officer. If

it is to be acted upon by the presiding officer, he shall be identified by name.

[29 FR 8219, June 30, 1964, as amended at 37 FR 19372, Sept. 20, 1972; 62 FR 4171, Jan. 29, 1997]

§ 1.211 Service.

Except as otherwise expressly provided in this chapter, all pleadings filed in a hearing proceeding shall be served upon all other counsel in the proceeding or, if a party is not represented by counsel, then upon such party. All such papers shall be accompanied by proof of service. For provisions governing the manner of service, see § 1.47.

[29 FR 8219, June 30, 1964]

PARTICIPANTS AND ISSUES

§ 1.221 Notice of hearing; appearances.

(a) Upon designation of an application for hearing, the Commission issues an order containing the following:

(1) A statement as to the reasons for the Commission's action.

(2) A statement as to the matters of fact and law involved, and the issues upon which the application will be heard.

(3) A statement as to the time, place, and nature of the hearing. (If the time and place are not specified, the order will indicate that the time and place will be specified at a later date.)

(4) A statement as to the legal authority and jurisdiction under which the hearing is to be held.

(b) The order designating an application for hearing is mailed to the applicant by the Reference Information Center of the Consumer and Governmental Affairs Bureau and this order or a summary thereof is published in the FEDERAL REGISTER. Reasonable notice of hearing will be given to the parties in all proceedings; and, whenever possible, the Commission will give at least 60 days notice of comparative hearings.

(c) In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, shall, within 20 days of the mailing of the notice of designation for hearing by the Reference Information Center of the Consumer and Governmental Affairs Bureau, file with the Commission, in triplicate, a written appearance stating

that he will appear of the date fixed for hearing and present evidence on the issues specified in the order. Where an applicant fails to file such a written appearance within the time specified, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the application will be dismissed with prejudice for failure to prosecute.

(d) The Commission will on its own motion name as parties to the hearing any person found to be a party in interest.

(e) In order to avail himself of the opportunity to be heard, any person named as a party pursuant to paragraph (d) of this section shall, within 20 days of the mailing of the notice of his designation as a party, file with the Commission, in person or by attorney, a written appearance in triplicate, stating that he will appear at the hearing. Any person so named who fails to file this written statement within the time specified, shall, unless good cause for such failure is shown, forfeit his hearing rights.

(f)(1) A fee must accompany each written appearance filed with the Commission in certain cases designated for hearing. See subpart G, part 1 for the amount due. Except as provided in paragraph (g) of this section, the fee must accompany each written appearance at the time of its filing and must be in conformance with the requirements of subpart G of the rules. A written appearance that does not contain the proper fee, or is not accompanied by a deferral request as per § 1.1115 of the rules, shall be dismissed and returned to the applicant by the fee processing staff. The presiding judge will be notified of this action and may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the correct fee within the original 20 day filing period.

NOTE: If the parties file a settlement agreement prior to filing the Notice of Appearance or simultaneously with it, the hearing fee need not accompany the Notice of Appearance. In filing the Notice of Appearance, the applicant should clearly indicate that a settlement agreement has been filed. (The fact that there are ongoing negotiations that may lead to a settlement does not affect the