

and O, Private Operational Fixed Microwave Service, and applications for high seas public coast stations (see §§80.122(b)(1) (first sentence), 80.357, 80.361, 80.363(a)(2), 80.371(a), (b), and (d), and §80.374 of this chapter) mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or St. Louis, Missouri for applications requiring the fees set forth at part 1, subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational Fixed Microwave Service, mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day. Applications for high seas public coast stations will be processed on a first come, first served basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applications. Applications for high seas public coast stations received on the same day will be treated as simultaneously filed and, if granting more than one would result in harmful interference, must be resolved through settlement or technical amendment.

(5) Any mutually exclusive application filed after the date prescribed in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section will be dismissed without prejudice and will be eligible for re-filing only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket.

(6) An application which is mutually exclusive with an application for renewal of license of a broadcast station filed on or before May 1, 1995 will be designated for comparative hearing with such license renewal application if it is substantially complete and ten-

dered for filing no later than the date prescribed in §73.3516(e).

[28 FR 12425, Nov. 22, 1963, as amended at 34 FR 7966, May 21, 1969; 37 FR 13983, July 15, 1972; 38 FR 26202, Sept. 19, 1973; 48 FR 27200, June 13, 1983; 48 FR 34039, July 27, 1983; 52 FR 10229, Mar. 31, 1987; 55 FR 46008, Oct. 31, 1990; 55 FR 46513, Nov. 5, 1990; 61 FR 18291, Apr. 25, 1996; 67 FR 34851, May 16, 2002; 67 FR 48563, July 25, 2002; 73 FR 9018, Feb. 19, 2008]

§ 1.229 Motions to enlarge, change, or delete issues.

(a) A motion to enlarge, change or delete the issues may be filed by any party to a hearing. Except as provided for in paragraph (b) of this section, such motions must be filed within 15 days after the full text or a summary of the order designating the case for hearing has been published in the FEDERAL REGISTER.

(b)(1) In comparative broadcast proceedings involving applicants for only new facilities, such motions shall be filed within 30 days of the release of the designation order, except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the FEDERAL REGISTER. (See §1.223 of this part).

(2) In comparative broadcast proceedings involving renewal applicants, such motions shall be filed within 30 days after publication of the full text or a summary of the designation order in the FEDERAL REGISTER.

(3) Any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), and (b)(2), of this section, shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

(c) In the absence of good cause for late filing of a motion to modify the issues, the motion to enlarge will be considered fully on its merits if (and

only if) initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing.

(d) Such motions, opposition thereto, and replies to oppositions shall contain specific allegations of fact sufficient to support the action requested. Such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits of a person or persons having personal knowledge thereof. The failure to file an opposition or a reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

(e) In comparative broadcast proceedings involving applicants for only new facilities, in addition to the showing with respect to the requested issue modification described in paragraph (d) of this section, the party requesting the enlargement of issues against an applicant in the proceeding shall identify those documents the moving party wishes to have produced and any other discovery procedures the moving party wishes to employ in the event the requested issue is added to the proceeding.

(1) In the event the motion to enlarge issues is granted, the Commission or delegated authority acting on the motion will also rule on the additional discovery requests, and, if granted, such additional discovery will be scheduled to be completed within 30 days of the action on the motion.

(2) The moving party may file supplemental discovery requests on the basis of information provided in responsive pleadings or discovered as a result of initial discovery on the enlarged issue. The grant or denial of any such supplemental requests and the timing of the completion of such supplemental discovery are subject to the discretion of the presiding judge.

(3) The 30-day time limit for completion of discovery on enlarged issues shall not apply where the persons subject to such additional discovery are not parties to the proceeding. In such case, additional time will be required to afford such persons adequate notice

of the discovery procedures being employed.

(f) In any case in which the presiding judge or the Commission grants a motion to enlarge the issues to inquire into allegations that an applicant made misrepresentations to the Commission or engaged in other misconduct during the application process, the enlarged issues include notice that, after hearings on the enlarged issue and upon a finding that the alleged misconduct occurred and warrants such penalty, in addition to or in lieu of denying the application, the applicant may be liable for a forfeiture of up to the maximum statutory amount. See 47 U.S.C. 503(b)(2)(A).

[41 FR 14872, Apr. 8, 1976, as amended at 44 FR 34947, June 18, 1979; 51 FR 19347, May 29, 1986; 56 FR 792, Jan. 9, 1991; 56 FR 25639, June 5, 1991; 62 FR 4171, Jan. 29, 1997]

PRESIDING OFFICER

§ 1.241 Designation of presiding officer.

(a) Hearings will be conducted by the Commission, by one or more commissioners, or by a law judge designated pursuant to section 11 of the Administrative Procedure Act. If a presiding officer becomes unavailable to the Commission prior to the taking of testimony another presiding officer will be designated.

(b) Unless the Commission determines that due and timely execution of its functions requires otherwise, presiding officers shall be designated, and notice thereof released to the public, at least 10 days prior to the date set for hearing.

(5 U.S.C. 556)

§ 1.243 Authority of presiding officer.

From the time he is designated to preside until issuance of his decision or the transfer of the proceeding to the Commission or to another presiding officer the presiding officer shall have such authority as is vested in him by law and by the provisions of this chapter, including authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas;
- (c) Examine witnesses;
- (d) Rule upon questions of evidence;