

§ 1.241

47 CFR Ch. I (10–1–09 Edition)

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;

Federal Communications Commission

§ 1.245

(e) Take or cause depositions to be taken;

(f) Regulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaging in contemptuous conduct or otherwise disrupting the proceedings;

(g) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law upon which he is required to rule during the course of the hearing;

(h) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(i) Dispose of procedural requests or similar matters, as provided for in § 0.341 of this chapter;

(j) Take actions and make decisions in conformity with the Administrative Procedure Act;

(k) Act on motions to enlarge, modify or delete the hearing issues; and

(l) Act on motions to proceed in forma pauperis pursuant to § 1.224.

(5 U.S.C. 556)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 53022, Dec. 3, 1976]

§ 1.244 Designation of a settlement judge.

(a) In broadcast comparative cases involving applicants for only new facilities, the applicants may request the appointment of a settlement judge to facilitate the resolution of the case by settlement.

(b) Where all applicants in the case agree that such procedures may be beneficial, such requests may be filed with the presiding judge no later than 15 days prior to the date scheduled by the presiding judge for the commencement of hearings. The presiding judge shall suspend the procedural dates in the case and forward the request to the Chief Administrative Law Judge for action.

(c) If, in the discretion of the Chief Administrative Law Judge, it appears that the appointment of a settlement judge will facilitate the settlement of the case, the Chief Judge will appoint a "neutral" as defined in 5 U.S.C. 581 and 583(a) to act as the settlement judge.

(1) The parties may request the appointment of a settlement judge of their own choosing so long as that per-

son 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