

## § 1.93

order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or a cease and desist order should be issued.

(Sec. 312, 48 Stat. 1086, as amended; 47 U.S.C. 312)

[28 FR 12415, Nov. 22, 1963, as amended at 29 FR 6443, May 16, 1964; 37 FR 19372, Sept. 20, 1972]

### § 1.93 Consent orders.

(a) As used in this subpart, a "consent order" is a formal decree accepting an agreement between a party to an adjudicatory hearing proceeding held to determine whether that party has violated statutes or Commission rules or policies and the appropriate operating Bureau, with regard to such party's future compliance with such statutes, rules or policies, and disposing of all issues on which the proceeding was designated for hearing. The order is issued by the officer designated to preside at the hearing or (if no officer has been designated) by the Chief Administrative Law Judge.

(b) Where the interests of timely enforcement or compliance, the nature of the proceeding, and the public interest permit, the Commission, by its operating Bureaus, may negotiate a consent order with a party to secure future compliance with the law in exchange for prompt disposition of a matter subject to administrative adjudicative proceedings. Consent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license (see 47 U.S.C. 308 and 309).

[41 FR 14871, Apr. 8, 1976]

### § 1.94 Consent order procedures.

(a) Negotiations leading to a consent order may be initiated by the operating Bureau or by a party whose possible violations are issues in the proceeding. Negotiations may be initiated at any time after designation of a proceeding for hearing. If negotiations are initiated the presiding officer shall be notified. Parties shall be prepared at the initial prehearing conference to state whether they are at that time willing

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to enter negotiations. See § 1.248(c)(7). If either party is unwilling to enter negotiations, the hearing proceeding shall proceed. If the parties agree to enter negotiations, they will be afforded an appropriate opportunity to negotiate before the hearing is commenced.

(b) Other parties to the proceeding are entitled, but are not required, to participate in the negotiations, and may join in any agreement which is reached.

(c) Every agreement shall contain the following:

(1) An admission of all jurisdictional facts;

(2) A waiver of the usual procedures for preparation and review of an initial decision;

(3) A waiver of the right of judicial review or otherwise to challenge or contest the validity of the consent order;

(4) A statement that the designation order may be used in construing the consent order;

(5) A statement that the agreement shall become a part of the record of the proceeding only if the consent order is signed by the presiding officer and the time for review has passed without rejection of the order by the Commission;

(6) A statement that the agreement is for purposes of settlement only and that its signing does not constitute an admission by any party of any violation of law, rules or policy (see 18 U.S.C. 6002); and

(7) A draft order for signature of the presiding officer resolving by consent, and for the future, all issues specified in the designation order.

(d) If agreement is reached, it shall be submitted to the presiding officer or Chief Administrative Law Judge, as the case may be, who shall either sign the order, reject the agreement, or suggest to the parties that negotiations continue on such portion of the agreement as he considers unsatisfactory or on matters not reached in the agreement. If he rejects the agreement, the hearing shall proceed. If he suggests further negotiations, the hearing will proceed or negotiations will continue, depending on the wishes of parties to the agreement. If he signs the consent order, he shall close the record.