

## Federal Communications Commission

## § 1.244

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;

(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

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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