

Federal Communications Commission

§ 1.120

(i) An order of the Commission which reverses or modifies the action taken pursuant to delegated authority is subject to the same provisions with respect to reconsideration as an original order of the Commission. In no event, however, shall a ruling which denies an application for review be considered a modification of the action taken pursuant to delegated authority.

(j) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

(k) The filing of an application for review shall be a condition precedent to judicial review of any action taken pursuant to delegated authority.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[28 FR 12415, Nov. 22, 1963, as amended at 41 FR 14871, Apr. 8, 1976; 44 FR 60295, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 48 FR 12719, Mar. 28, 1983; 50 FR 39000, Sept. 26, 1985; 54 FR 40392, Oct. 2, 1989; 55 FR 36641, Sept. 6, 1990; 57 FR 19387, May 6, 1992; 62 FR 4170, Jan. 29, 1997; 63 FR 41446, Aug. 4, 1998; 67 FR 13223, Mar. 21, 2002]

§ 1.117 Review on motion of the Commission.

(a) Within 40 days after public notice is given of any action taken pursuant to delegated authority, the Commission may on its own motion order the record of the proceeding before it for review.

(b) If the Commission reviews the proceeding on its own motion, it may order such further procedure as may be useful to it in its review of the action taken pursuant to delegated authority.

(c) With or without such further procedure, the Commission may either affirm, reverse, modify, or set aside the action taken, or remand the proceeding to the designated authority for reconsideration in accordance with its instructions. If an evidentiary hearing has been held, the Commission may remand the proceeding to the person(s) who conducted the hearing for rehearing on such issues and in accordance with such instructions as may be ap-

propriate. An order of the Commission which reverses or modifies the action taken pursuant to delegated authority, or remands the matter for further proceedings, is subject to the same provisions with respect to reconsideration as an original action of the Commission.

§ 1.120 Protests of grants without hearing.

(a) The provisions of this section shall not be applicable to any application: (1) Filed on or after December 12, 1960; (2) filed before December 12, 1960, but substantially amended (as defined in the applicable provisions of this chapter) on or after that date; or (3) filed before December 12, 1960, and not thereafter substantially amended, but with respect to which the rules in this chapter provide an opportunity for petitions to deny to be filed under section 309 of the Communications Act, as amended. See §§ 1.580 and 1.962.

(b) Where any instrument of authorization for a radio station, other than a license pursuant to a construction permit, has been granted without a hearing, any party in interest may file a protest directed to such grant and request a hearing on the application granted. Such protest shall be signed by the protestant and subscribed to under oath. Such protest must be filed with the Commission within 30 days after release of the document containing the full text of such action, or in case such a document is not released, after release of a "Public Notice" announcing the action in question and must separately set forth:

(1) Such allegations of fact as will show the protestant to be a party in interest, i.e., a person aggrieved or whose interests are adversely affected by the Commission's authorization, protest of which is sought. Each such allegation of fact shall be separately stated.

(2) Facts indicating the reasons why the grant was improperly made or would otherwise not be in the public interest. Each such reason shall be separately stated, and facts in support thereof shall be specified in detail and shall not include general non-specific conclusory arguments and allegations.

(3) The specific issues upon which protestant wishes a hearing to be held,

which issues must relate directly to a matter specified with particularity as part of paragraph (b)(2) of this section.

(c) Arguments and citations of authority may be set forth in a brief accompanying the protest but must be excluded from the protest itself.

(d) Oppositions to protests and briefs in support thereof shall contain all material, including that pertinent to the determination referred to in paragraph (i) of this section, deemed appropriate to the Commission's resolution of the protest. Such oppositions and supporting briefs must be filed within 10 days after the filing of such protest, and any replies to such oppositions must be filed within 5 days after the filing of the oppositions.

(e) Protests, oppositions, and replies shall be filed with the Commission in original and 14 copies and shall be accompanied by proof of service upon the grantee or the protestant, as the case may be, and/or their respective attorneys.

(f) The Commission may upon consideration of a protest direct either the protestant or grantee or both to submit further statements of fact under oath relating to the matters raised in the protest.

(g) Within 30 days from the date of the filing of the protest, the Commission will enter findings as to whether such protest meets the requirements set forth in paragraphs (b) (1) and (2) of this section. If the Commission finds that one of these requirements is not met, it will dismiss the protest. If the Commission finds that these requirements are met, it will designate the application in question for hearing. As to issues which the Commission believes present no grounds for setting aside the grant, even if the facts alleged were to be proven, the Commission may designate such issues for oral argument only. The other issues will be designated for evidentiary hearing except that the Commission may redraft the issues in accordance with the facts or substantive matters alleged in the protest and may also specify such additional issues as it deems desirable. In any evidentiary hearing subsequently held upon issues specified by the Commission, upon its own initiative or adopted by it, both the burden of pro-

ceeding with the introduction of evidence and the burden of proof shall be upon the grantee. With respect to issues resulting from facts set forth in the protest and not adopted or specified by the Commission on its own motion, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the protestant.

(h) The procedure in such protest hearing shall be governed by the provisions of subpart B of this part, except as otherwise provided in this section.

(i) Pending hearing and decision, the effective date of the Commission's action to which protest is made shall be postponed to the effective date of the Commission's decision after hearing, unless the authorization involved is 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]