

§ 1.249

shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to §1.221(h) or within such shorter or longer period as the Commission may allow on motion or notice consistent with the public interest.

(b)(1) The presiding officer (or the Commission or a panel of commissioners in a case over which it presides), on his own initiative or at the request of any party, may direct the parties or their attorneys to appear at a specified time and place for a conference prior to or during the course of a hearing, or to submit suggestions in writing, for the purpose of considering any of the matters set forth in paragraph (c) of this section. The initial prehearing conference shall be scheduled 30 days after the effective date of the order designating a case for hearing, unless good cause is shown for scheduling such conference at a later date, except that for program carriage complaints filed pursuant to §76.1302 of this chapter that the Chief, Media Bureau refers to an administrative law judge for an initial decision, the initial prehearing conference shall be held no later than 10 calendar days after the deadline for submitting written appearances pursuant to §1.221(h) or within such shorter or longer period as the presiding officer may allow on motion or notice consistent with the public interest.

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§ 1.249 Prehearing statement.

Immediately upon convening the formal hearing in any proceeding, the presiding officer shall enter upon the record a statement reciting all actions taken at the prehearing conferences, and incorporating into the record all of the stipulations and agreements of the parties which are approved by him, and any special rules which he may deem necessary to govern the course of the proceeding.

[28 FR 12425, Nov. 22, 1963. Redesignated at 33 FR 463, Jan. 12, 1968]

HEARING AND INTERMEDIATE DECISION

§ 1.250 Discovery and preservation of evidence; cross-reference.

For provisions relating to prehearing discovery and preservation of admissible evidence, see §§ 1.311 through 1.325.

[33 FR 463, Jan. 12, 1968]

§ 1.251 Summary decision.

(a)(1) Any party to an adjudicatory proceeding may move for summary decision of all or any of the issues set for

hearing. The motion shall be filed at least 20 days prior to the date set for commencement of the hearing. The party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing.

(2) With the permission of the presiding officer, or upon his invitation, a motion for summary decision may be filed at any time before or after the commencement of the hearing. No appeal from an order granting or denying a request for permission to file a motion for summary decision shall be allowed. If the presiding officer authorizes a motion for summary decision after the commencement of the hearing, proposed findings of fact and conclusions of law on those issues which the moving party believes can be resolved shall be attached to the motion, and any other party may file findings of fact and conclusions of law as an attachment to pleadings filed by him pursuant to paragraph (b) of this section.

(b) Within 14 days after a motion for summary decision is filed, any other party to the proceeding may file an opposition or a countermotion for summary decision. A party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is a genuine issue of material fact for determination at the hearing, that he cannot, for good cause, present by affidavit or otherwise facts essential to justify his opposition, or that summary decision is otherwise inappropriate.

(c) Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The presiding officer may, in his discretion, set the matter for argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The presiding officer, giving appropriate weight to the nature of the proceeding, the issue or issues, the