

proof, and to the need for cross-examination, may grant a motion for summary decision to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is otherwise entitled to summary decision. If it appears from the affidavits of a party opposing the motion that he cannot, for good cause shown, present by affidavit or otherwise facts essential to justify his opposition, the presiding officer may deny the motion, may order a continuance to permit affidavits to be obtained or discovery to be had, or make such other order as is just.

(e) If all of the issues (or a dispositive issue) are determined on a motion for summary decision no hearing (or further hearing) will be held. The presiding officer will issue a Summary Decision, which is subject to appeal or review in the same manner as an Initial Decision. See §§1.271 through 1.282. If some of the issues only (including no dispositive issue) are decided on a motion for summary decision, or if the motion is denied, the presiding officer will issue a memorandum opinion and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeal from interlocutory rulings is governed by §1.301.

(f) The presiding officer may take any action deemed necessary to assure that summary decision procedures are not abused. He may rule in advance of a motion that the proceeding is not appropriate for summary decision, and may take such other measures as are necessary to prevent any unwarranted delay.

(1) Should it appear to the satisfaction of the presiding officer that a motion for summary decision has been presented in bad faith or solely for the purpose of delay, or that such a motion is patently frivolous, he will enter a determination to that effect upon the record.

(2) If, on making such determination, the presiding officer concludes that the facts warrant disciplinary action against an attorney, he will certify the matter to the Commission with his

findings and recommendations, for consideration under §1.24.

(3) If, on making such determination, the presiding officer concludes that the facts warrant a finding of bad faith on the part of a party to the proceeding, he will certify the matter to the Commission, with his findings and recommendations, for a determination as to whether the facts warrant addition of an issue as to the character qualifications of that party.

[37 FR 7507, Apr. 15, 1972, as amended at 42 FR 56508, Oct. 26, 1977]

#### § 1.253 Time and place of hearing.

(a) The Commission will specify the day on which and the place at which any hearing is to commence.

(b) The presiding officer will specify the days on which subsequent hearing sessions are to be held.

(c) If the Commission specifies that a hearing is to commence in the District of Columbia, it shall be moved therefrom only by order of the Commission.

(d) If the Commission specifies that a hearing is to commence at a field location, all appropriate proceedings will be completed at such location before the hearing is moved therefrom. When such proceedings are completed, the presiding officer may move the hearing from the field location specified to another appropriate field location or to the District of Columbia.

#### § 1.254 Nature of the hearing; burden of proof.

Any hearing upon an application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant except as otherwise provided in the order of designation.

(Sec. 309, 48 Stat. 1085, as amended; 47 U.S.C. 309)

#### § 1.255 Order of procedure.

(a) At hearings on a formal complaint or petition or in a proceeding for any instrument of authorization which the Commission is empowered to issue,

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the complainant, petitioner, or applicant, as the case may be, shall, unless the Commission otherwise orders, open and close. At hearings on protests, the protestant opens and closes the proceedings in case the issues are not specifically adopted by the Commission; otherwise the grantee does so. At hearings on orders to show cause, to cease and desist, to revoke or modify a station license under sections 312 and 316 of the Communications Act, or other like proceedings instituted by the Commission, the Commission shall open and close.

(b) At all hearings under Title II of the Communications Act, other than hearings on formal complaints, petitions, or applications, the respondent shall open and close unless otherwise specified by the Commission.

(c) In all other cases, the Commission or presiding officer shall designate the order of presentation. Intervenors shall follow the party in whose behalf intervention is made, and in all cases where the intervention is not in support of an original party, the Commission or presiding officer shall designate at what stage such intervenors shall be heard.

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

### § 1.258 Closing of the hearing.

The record of hearing shall be closed by an announcement to that effect at the hearing by the presiding officer when the taking of testimony has been concluded. In the discretion of the presiding officer, the record may be closed as of a future specified date in order to permit the admission into the record of exhibits to be prepared: *Provided*, The parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing which has been adjourned may not be closed by such officer prior to the day on which the hearing is to resume, except upon 10 days' notice to all parties to the proceeding.

### § 1.260 Certification of transcript.

After the close of the hearing, the complete transcript of testimony, together with all exhibits, shall be certified as to identity by the presiding of-

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ficer and filed in the Office of the Secretary. Notice of such certification shall be served on all parties to the proceedings.

[71 FR 15618, Mar. 29, 2006]

### § 1.261 Corrections to transcript.

At any time during the course of the proceeding, or as directed by the presiding officer, but not later than 10 days after the date of notice of certification of the transcript, any party to the proceeding may file with the presiding officer a motion requesting the correction of the transcript, which motion shall be accompanied by proof of service thereof upon all other parties to the proceeding. Within 5 days after the filing of such a motion, other parties may file a pleading in support of or in opposition to such motion. Thereafter, the presiding officer shall, by order, specify the corrections to be made in the transcript, and a copy of the order shall be served upon all parties and made a part of the record. The presiding officer, on his own initiative, may specify corrections to be made in the transcript on 5 days' notice.

[40 FR 51441, Nov. 5, 1975]

### § 1.263 Proposed findings and conclusions.

(a) Each party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law: *Provided, however*, That the presiding officer may direct any party other than Commission counsel to file proposed findings of fact and conclusions, briefs, or memoranda of law. Such proposed findings of fact, conclusions, briefs, and memoranda of law shall be filed within 20 days after the record is closed, unless additional time is allowed.

(b) All pleadings and other papers filed pursuant to this section shall be accompanied by proof of service thereof upon all other counsel in the proceeding; if a party is not represented by counsel, proof of service upon such party shall be made.

(c) In the absence of a showing of good cause therefor, the failure to file proposed findings of fact, conclusions,