

## Federal Communications Commission

## § 1.273

briefs, or memoranda of law, when directed to do so, may be deemed a waiver of the right to participate further in the proceeding.

(5 U.S.C. 557)

### § 1.264 Contents of findings of fact and conclusions.

Proposed findings of fact shall be set forth in serially numbered paragraphs and shall set out in detail and with particularity all basic evidentiary facts developed on the record (with appropriate citations to the transcript of record or exhibit relied on for each evidentiary fact) supporting the conclusions proposed by the party filing same. Proposed conclusions shall be separately stated. Proposed findings of fact and conclusions submitted by a person other than an applicant may be limited to those issues in connection with the hearing which affect the interests of such person.

(5 U.S.C. 557)

### § 1.267 Initial and recommended decisions.

(a) Except as provided in this paragraph, in §§1.94, 1.251 and 1.274, or where the proceeding is terminated on motion (see §1.302), the presiding officer shall prepare an initial (or recommended) decision, which shall be transmitted to the Secretary of the Commission. In the case of rate making proceedings conducted under sections 201-205 of the Communications Act, the presumption shall be that the presiding officer shall prepare an initial or recommended decision. The Secretary will make the decision public immediately and file it in the docket of the case.

(b) Each initial and recommended decision shall contain findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; each initial decision shall also contain the appropriate rule or order, and the sanction, relief or denial thereof; and each recommended decision shall contain recommendations as to what disposition of the case should be made by the Commission. Each initial decision will show the date upon which it will be-

come effective in accordance with the rules in this part in the absence of exceptions, appeal, or review.

(c) The authority of the Presiding Officer over the proceedings shall cease when he has filed his Initial or Recommended Decision, or if it is a case in which he is to file no decision, when he has certified the case for decision: *Provided*, however, That he shall retain limited jurisdiction over the proceeding for the purpose of effecting certification of the transcript and corrections to the transcript, as provided in §§1.260 and 1.261, respectively, and for the purpose of ruling initially on applications for awards of fees and expenses under the Equal Access to Justice Act.

(Sec. 409, 48 Stat. 1096, as amended; 47 U.S.C. 409, 5 U.S.C. 557; secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976; 47 FR 3786, Jan. 27, 1982]

## REVIEW PROCEEDINGS

### § 1.271 Delegation of review function.

The Commission may direct, by order or rule, that its review function in a case or category of cases be performed by a commissioner, or a panel of commissioners, in which event the commissioner or panel shall exercise the authority and perform the functions which would otherwise have been performed by the Commission under §§1.273 through 1.282.

NOTE: To provide for an orderly completion of cases, exceptions and related pleadings filed after March 1, 1996, shall be directed to the Commission and will not be acted upon by the Review Board.

[62 FR 4171, Jan. 29, 1997]

### § 1.273 Waiver of initial or recommended decision.

At the conclusion of the hearing or within 20 days thereafter, all parties to the proceeding may agree to waive an initial or recommended decision, and may request that the Commission issue a final decision or order in the case. If the Commission has directed that its review function in the case be performed by a commissioner, a panel of

## § 1.274

commissioners, the request shall be directed to the appropriate review authority. The Commission or such review authority may in its discretion grant the request, in whole or in part, if such action will best conduce to the proper dispatch of business and to the ends of justice.

[28 FR 12425, Nov. 22, 1963, as amended at 62 FR 4171, Jan. 29, 1997]

### **§ 1.274 Certification of the record to the Commission for initial or final decision.**

(a) Where the presiding officer is available to the Commission, and where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires, the Commission may direct that the record in a pending proceeding be certified to it for initial or final decision. Unless the Commission finds that due and timely execution of its functions imperatively and unavoidably requires that no recommended decision be issued, the presiding officer will prepare and file a recommended decision, which will be released with the Commission's initial or final decision.

(b) Where the presiding officer becomes unavailable to the Commission after the taking of testimony has been concluded, the Commission may direct that the record in a pending proceeding be certified to it for initial or final decision. In that event, the record shall be certified to the Commission by the Chief Administrative Law Judge.

(c)(1) Where the presiding officer becomes unavailable to the Commission after the taking of evidence has commenced but before it has been concluded, the Commission may order a rehearing before another presiding officer designated in accordance with § 1.241.

(2) Upon a finding that due and timely execution of its functions imperatively and unavoidably so requires, the Commission may (as an alternative) order that the hearing be continued by another presiding officer designated in accordance with § 1.241 or by the Commission itself. In that event, the officer continuing the hearing shall, upon completion of the hearing, certify the proceeding to the Commission for an

## 47 CFR Ch. I (10–1–11 Edition)

initial or final decision. Unless the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably requires that no recommended decision be issued, the officer continuing the hearing shall prepare and file a recommended decision to be released with the Commission's initial or final decision. If all the parties expressly consent, and if the Commission does not order otherwise, the officer continuing the hearing may prepare an initial decision.

(Sec. 409, 48 Stat. 1096, as amended; 47 U.S.C. 409)

### **§ 1.276 Appeal and review of initial decision.**

(a)(1) Within 30 days after the date on which public release of the full text of an initial decision is made, or such other time as the Commission may specify, any of the parties may appeal to the Commission by filing exceptions to the initial decision, and such decision shall not become effective and shall then be reviewed by the Commission, whether or not such exceptions may thereafter be withdrawn. It is the Commission's policy that extensions of time for filing exceptions shall not be routinely granted.

(2) Exceptions shall be consolidated with the argument in a supporting brief and shall not be submitted separately. As used in this subpart, the term *exceptions* means the document consolidating the exceptions and supporting brief. The brief shall contain (i) a table of contents, (ii) a table of citations, (iii) a concise statement of the case, (iv) a statement of the questions of law presented, and (v) the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific reference to the record and all legal or other materials relied on.

(b) The Commission may on its own initiative provide, by order adopted not later than 20 days after the time for filing exceptions expires, that an initial decision shall not become final, and that it shall be further reviewed or considered by the Commission.

(c) In any case in which an initial decision is subject to review in accordance with paragraph (a) or (b) of this