

order for the taking of depositions is not required.

(2) If an opposition motion is filed, the depositions described in the notice shall not be taken until the presiding officer has acted on that motion. If the presiding officer authorizes the taking of depositions, he may specify a time, place or officer for taking them different from that specified in the notice to take depositions.

(3) If the presiding officer issues a protective order, the depositions described in the notice may be taken (if at all) only in accordance with the provisions of that order.

(e) *Broadcast comparative proceedings involving applicants for only new facilities.* In these cases, the 21-day advance notice provision of paragraph (a) of this section shall be inapplicable to depositions of active and passive owners of applicants in the proceeding. All applicants in such proceedings should be prepared to make their active and passive owners available for depositions during the period commencing with the deadline for filing notices of appearance and ending 90 days after the release of the designation order, if such depositions are requested by a party to the proceeding. All such depositions will be conducted in Washington, DC or in the community of license of the proposed station, at the deponent's option, unless all parties agree to some other location.

[33 FR 10571, July 25, 1968, as amended at 56 FR 794, Jan. 9, 1991]

§ 1.316 Depositions upon written interrogatories—notice and preliminary procedure.

(a) *Service of interrogatories; notice.* A party to the hearing proceeding desiring to take the deposition of any person upon written interrogatories shall serve the interrogatories upon every other party and shall give a minimum of 35 days notice in writing to every other party and to the person to be examined. An original and three copies of the interrogatories and the notice (and of all related pleadings) shall be filed with the Secretary of the Commission. A copy of the interrogatories and the notice (and of all related pleadings) shall be served on the presiding officer.

The notice shall contain the following information:

(1) The name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The time and place for taking the deposition of each person to be examined, and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(3) The matters upon which each person will be examined. See § 1.319.

(b) *Additional interrogatories.* Within 7 days after the filing and service of the original interrogatories, any other party to the proceeding may, in the same manner, file and serve additional interrogatories to be asked of the same witness at the same time and place, with notice to the witness of any additional matters upon which he will be examined.

(c) *Cross interrogatories.* Within 14 days after the filing and service of the original interrogatories, any party to the proceeding may, in the same manner, file and serve cross interrogatories, which shall be limited to matters raised in the original or in the additional interrogatories.

(d) *Responsive pleadings.* (1) Within 21 days after service of the original interrogatories, any party to the proceeding may move to limit or suppress any original, additional or cross interrogatory, and the person to be examined may file a motion opposing the taking of depositions. See § 1.319(a).

(2) Within 28 days after service of the original interrogatories, a response to a motion to limit or suppress any interrogatory or to a motion opposing the taking of depositions may be filed by any party to the proceeding.

(3) Additional pleadings should not be filed and will not be considered.

(e) *Protective order.* On a motion to limit or suppress or an opposition motion filed under paragraph (d) of this section, or on his own motion, the presiding officer may issue a protective order. See § 1.313. A protective order issued by the presiding officer on his own motion may be issued at any time prior to the date specified in the notice for the taking of depositions.

(f) *Authority to take depositions.* (1) If an opposition motion is not filed within 21 days after service of the notice to take depositions, and if the presiding officer does not on his own motion issue a protective order prior to the time specified in the notice for the taking of depositions, the depositions described in the notice may be taken. An order for the taking of depositions is not required.

(2) If an opposition motion is filed, the depositions described in the notice shall not be taken until the presiding officer has acted on that motion. If the presiding officer authorizes the taking of depositions, he may specify a time, place or officer for taking them different from that specified in the notice to take depositions.

(3) If the presiding officer issues a protective order, the depositions described in the notice may be taken (if at all) only in accordance with the provisions of that order.

NOTE: The computation of time provisions of § 1.4(g) shall not apply to interrogatories and pleadings filed under the provisions of this section.

[33 FR 10571, July 25, 1968]

§ 1.318 The taking of depositions.

(a) *Persons before whom depositions may be taken.* Depositions shall be taken before any judge of any court of the United States; any U.S. Commissioner; any clerk of a district court; any chancellor, justice or judge of a supreme or superior court; the mayor or chief magistrate of a city; any judge of a county court, or court of common pleas of any of the United States; any notary public, not being of counsel or attorney to any party, nor interested in the event of the proceeding; or presiding officers, as provided in § 1.243.

(b) *Attendance of witnesses.* The attendance of witnesses at the taking of depositions may be compelled by the use of subpoena as provided in §§ 1.331 through 1.340.

(c) *Oath; transcript.* The officer before whom the deposition is to be taken shall administer an oath or affirmation to the witness and shall personally, or by someone acting under his direction and in his presence record the testimony of the witness. The testimony may be taken stenographically or,

upon approval by the presiding officer, testimony may be taken through the use of telephonically or electronically recorded methods, including videotape. In the event these latter methods are used for the deposition, the parties may agree to the waiver of the provisions of paragraphs (e) and (f) as appropriate and as approved by the presiding officer.

(d) *Examination.* (1) In the taking of depositions upon oral examination, the parties may proceed with examination and cross-examination of deponents as permitted at the hearing. In lieu of participating in the oral examination, parties served with the notice to take depositions may transmit written interrogatories to the officer designated in the notice, who shall propound them to the witness and record the answers verbatim.

(2) In the taking of depositions upon written interrogatories, the party who served the original interrogatories shall transmit copies of all interrogatories to the officer designated in the notice, who shall propound them to the witness and record the answers verbatim.

(e) *Submission of deposition to witness; changes; signing.* When the testimony is fully transcribed, the deposition of each witness shall be submitted to him for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing, or the witness is ill, cannot be found, or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver, the illness or absence of the witness, or of his refusal to sign, together with the reason (if any) given therefor; and the deposition may then be used as fully as though signed, unless upon a motion to suppress, the presiding officer holds that the reason given for the refusal to sign requires rejection of the deposition in whole or in part.