

Federal Communications Commission

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on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If the Administrative Law Judge approves the proposed settlement, it shall be forwarded to the Commission for final approval.

§ 1.1526 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Bureau counsel, or on his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than excessive demand or substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency embodied an excessive demand or was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[47 FR 3786, Jan. 27, 1982, as amended at 52 FR 11653, Apr. 10, 1987; 61 FR 39899, July 31, 1996]

§ 1.1527 Decision.

The Administrative Law Judge shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. The decision shall include written findings and conclusions regarding the applicant's eligibility and whether the applicant was a prevailing party or whether the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the adversary adjudication, and an explanation of the reasons for any

difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position substantially justified, whether the applicant unduly protracted the proceedings, committed a willful violation of law, or otherwise acted in bad faith, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

[61 FR 39900, July 31, 1996]

§ 1.1528 Commission review.

Either the applicant or Bureau counsel may seek Commission review of the initial decision on the application, or the Commission may decide to review the decision on its own initiative, in accordance with §§ 1.276 through 1.282 of this chapter. Except as provided in § 1.1525, if neither the applicant nor Bureau counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 50 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the Administrative Law Judge for further proceedings.

[47 FR 3786, Jan. 27, 1982, as amended at 61 FR 39900, July 31, 1996]

§ 1.1529 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1.1530 Payment of award.

An applicant seeking payment of an award from the Commission shall submit to the General Counsel a copy of the Commission's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts, or a copy of the court's order directing payment. The Commission will pay the amount awarded to

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the applicant unless judicial review of the award or the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Subpart L—Random Selection Procedures for Mass Media Services

AUTHORITY: 47 U.S.C. 309(i).

SOURCE: 48 FR 27202, June 13, 1983, unless otherwise noted.

GENERAL PROCEDURES

§ 1.1601 Scope.

The provisions of this subpart, and the provisions referenced herein, shall apply to applications for initial licenses or construction permits or for major changes in the facilities of authorized stations in the following services:

(a)–(b) [Reserved]

[48 FR 27202, June 13, 1983, as amended at 63 FR 48622, Sept. 11, 1998]

§ 1.1602 Designation for random selection.

Applications in the services specified in § 1.1601 shall be tendered, accepted or dismissed, filed, publicly noted and subject to random selection and hearing in accordance with any relevant rules. Competing applications for an initial license or construction permit shall be designated for random selection and hearing in accordance with the procedures set forth in §§ 1.1603 through 1.1623 and § 73.3572 of this chapter.

§ 1.1603 Conduct of random selection.

The random selection probabilities will be calculated in accordance with the formula set out in rules §§ 1.1621 through 1.1623.

[48 FR 27202, June 13, 1983, as amended at 48 FR 43330, Sept. 23, 1983]

§ 1.1604 Post-selection hearings.

(a) Following the random selection, the Commission shall announce the “tentative selectee” and, where permitted by § 73.3584 invite Petitions to Deny its application.

(b) If, after such hearing as may be necessary, the Commission determines that the “tentative selectee” has met the requirements of § 73.3591(a) it will make the appropriate grant. If the Commission is unable to make such a determination, it shall order that another random selection be conducted from among the remaining mutually exclusive applicants, in accordance with the provisions of this subpart.

(c) If, on the basis of the papers before it, the Commission determines that a substantial and material question of fact exists, it shall designate that question for hearing. Hearings may be conducted by the Commission or, in the case of a matter which requires oral testimony for its resolution, an Administrative Law Judge.

[48 FR 27202, June 13, 1983, as amended at 63 FR 48622, Sept. 11, 1998]

§ 1.1621 Definitions.

(a) *Medium of mass communications* means:

- (1) A daily newspaper;
- (2) A cable television system; and
- (3) A license or construction permit for

(i) A television station, including low power TV or TV translator,

(ii) A standard (AM) radio station,

(iii) An FM radio station,

(iv) A direct broadcast satellite transponder under the editorial control of the licensee, and

(v) A Multipoint Distribution Service station.

(b) *Minority group* means:

- (1) Blacks,
- (2) Hispanics
- (3) American Indians,
- (4) Alaska Natives,
- (5) Asians, and
- (6) Pacific Islanders.

(c) *Owner* means the applicant and any individual, partnership, trust, unincorporated association, or corporation which:

(1) If the applicant is a proprietorship, is the proprietor,

(2) If the applicant is a partnership, holds any partnership interest,

(3) If the applicant is a trust, is the beneficiary thereof,

(4) If the applicant is an unincorporated association or non-stock corporation, is a member, or, in the case