

## § 1.88

## 47 CFR Ch. I (10–1–13 Edition)

(b) The notification required in paragraph (a) of this section may be effectuated by a notice of proposed rule making in regard to a modification or addition of an FM or television channel to the Table of Allotments (§§ 73.202 and 73.504) or Table of Assignments (§ 73.606). The Commission shall send a copy of any such notice of proposed rule making to the affected licensee or permittee by certified mail, return receipt requested.

(c) Any other licensee or permittee who believes that its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.

(d) Any protest filed pursuant to this section shall be subject to the requirements of section 309 of the Communications Act of 1934, as amended, for petitions to deny.

(e) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission except that, with respect to any issue that pertains to the question of whether the proposed action would modify the license or permit of a person filing a protest pursuant to paragraph (c) of this section, such burdens shall be as described by the Commission.

(f) In order to utilize the right to a hearing and the opportunity to appear and give evidence upon the issues specified in any hearing order, the licensee or permittee, in person or by attorney, shall, within the period of time as may be specified in the hearing order, file with the Commission a written statement stating that he or she will appear at the hearing and present evidence on the matters specified in the hearing order.

(g) The right to file a protest or have a hearing shall, unless good cause is shown in a petition to be filed not later than 5 days before the lapse of time specified in paragraph (a) or (f) of this section, be deemed waived:

(1) In case of failure to timely file the protest as required by paragraph (a) of this section or a written statement as required by paragraph (f) of this section.

(2) In case of filing a written statement provided for in paragraph (f) of this section but failing to appear at the hearing, either in person or by counsel.

(h) Where the right to file a protest or have a hearing is waived, the licensee or permittee will be deemed to have consented to the modification as proposed and a final decision may be issued by the Commission accordingly. Irrespective of any waiver as provided for in paragraph (g) of this section or failure by the licensee or permittee to raise a substantial and material question of fact concerning the proposed modification in his protest, the Commission may, on its own motion, designate the proposed modification for hearing in accordance with this section.

(i) Any order of modification issued pursuant to this section shall include a statement of the findings and the grounds and reasons therefor, shall specify the effective date of the modification, and shall be served on the licensee or permittee.

[52 FR 22654, June 15, 1987]

### § 1.88 Predesignation pleading procedure.

In cases where an investigation is being conducted by the Commission in connection with the operation of a broadcast station or a pending application for renewal of a broadcast license, the licensee may file a written statement to the Commission setting forth its views regarding the matters under investigation; the staff, in its discretion, may in writing, advise such licensee of the general nature of the investigation, and advise the licensee of its opportunity to submit such a statement to the staff. Any filing by the licensee will be forwarded to the Commission in conjunction with any staff memorandum recommending that the Commission take action as a result of the investigation. Nothing in this rule shall supersede the application of our *ex parte* rules to situations described in § 1.1203 of these rules.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307))

[45 FR 65597, Oct. 3, 1980]