

Federal Communications Commission

§ 1.106

notice as defined in §1.4(b) of these rules.

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

[46 FR 18556, Mar. 25, 1981]

§ 1.104 Preserving the right of review; deferred consideration of application for review.

(a) The provisions of this section apply to all final actions taken pursuant to delegated authority, including final actions taken by members of the Commission's staff on nonhearing matters. They do not apply to interlocutory actions of the Chief Administrative Law Judge in hearing proceedings, or to hearing designation orders issued under delegated authority. See §§0.351, 1.106(a) and 1.115(e).

(b) Any person desiring Commission consideration of a final action taken pursuant to delegated authority shall file either a petition for reconsideration or an application for review (but not both) within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. The petition for reconsideration will be acted on by the designated authority or referred by such authority to the Commission: *Provided*, That a petition for reconsideration of an order designating a matter for hearing will in all cases be referred to the Commission. The application for review will in all cases be acted upon by the Commission.

NOTE: In those cases where the Commission does not intend to release a document containing the full text of its action, it will state that fact in the public notice announcing its action.

(c) If in any matter one party files a petition for reconsideration and a second party files an application for review, the Commission will withhold action on the application for review until final action has been taken on the petition for reconsideration.

(d) Any person who has filed a petition for reconsideration may file an application for review within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. If a petition for reconsideration has been filed, any person who has filed an application for review

may: (1) Withdraw his application for review, or (2) substitute an amended application therefor.

NOTE: In those cases where the Commission does not intend to release a document containing the full text of its action, it will state that fact in the public notice announcing its action.

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

[28 FR 12415, Nov. 22, 1963, as amended at 41 FR 14871, Apr. 8, 1976; 44 FR 60294, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 62 FR 4170, Jan. 29, 1997]

§ 1.106 Petitions for reconsideration in non-rulemaking proceedings.

(a)(1) Except as provided in paragraphs (b)(3) and (p) of this section, petitions requesting reconsideration of a final Commission action in non-rulemaking proceedings will be acted on by the Commission. Petitions requesting reconsideration of other final actions taken pursuant to delegated authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. (For provisions governing reconsideration of Commission action in notice and comment rulemaking proceedings, see §1.429. This §1.106 does not govern reconsideration of such actions.)

(2) Within the period allowed for filing a petition for reconsideration, any party to the proceeding may request the presiding officer to certify to the Commission the question as to whether, on policy in effect at the time of designation or adopted since designation, and undisputed facts, a hearing should be held. If the presiding officer finds that there is substantial doubt, on established policy and undisputed facts, that a hearing should be held, he will certify the policy question to the Commission with a statement to that effect. No appeal may be filed from an order denying such a request. See also, §§1.229 and 1.251.

(b)(1) Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present:

(i) The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; or

(ii) The petition relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.

(3) A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.

(c) In the case of any order other than an order denying an application for review, a petition for reconsideration which relies on facts or arguments not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts or arguments fall within one or more of the categories set forth in § 1.106(b)(2); or

(2) The Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest.

(d)(1) A petition for reconsideration shall state with particularity the respects in which petitioner believes the

action taken by the Commission or the designated authority should be changed. The petition shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests.

(2) A petition for reconsideration of a decision that sets forth formal findings of fact and conclusions of law shall also cite the findings and/or conclusions which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and/or conclusions should be changed. The petition may request that additional findings of fact and/or conclusions of law be made.

(e) Where a petition for reconsideration is based upon a claim of electrical interference, under appropriate rules in this chapter, to an existing station or a station for which a construction permit is outstanding, such petition, in addition to meeting the other requirements of this section, must be accompanied by an affidavit of a qualified radio engineer. Such affidavit shall show, either by following the procedures set forth in this chapter for determining interference in the absence of measurements, or by actual measurements made in accordance with the methods prescribed in this chapter, that electrical interference will be caused to the station within its normally protected contour.

(f) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules, and shall be served upon parties to the proceeding. The petition for reconsideration shall not exceed 25 double spaced typewritten pages. No supplement or addition to a petition for reconsideration which has not been acted upon by the Commission or by the designated authority, filed after expiration of the 30 day period, will be considered except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefor.

(g) Oppositions to a petition for reconsideration shall be filed within 10 days after the petition is filed, and shall be served upon petitioner and parties to the proceeding. Oppositions

shall not exceed 25 double spaced typewritten pages.

(h) Petitioner may reply to oppositions within seven days after the last day for filing oppositions, and any such reply shall be served upon parties to the proceeding. Replies shall not exceed 10 double spaced typewritten pages, and shall be limited to matters raised in the opposition.

(i) Petitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52 and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554, by mail, by commercial courier, by hand, or by electronic submission through the Commission's Electronic Comment Filing System or other electronic filing system (such as ULS). Petitions submitted only by electronic mail and petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed. Parties filing in electronic form need only submit one copy.

(j) The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny or dismiss the petition. Its order will contain a concise statement of the reasons for the action taken. Where the petition for reconsideration relates to an instrument of authorization granted without hearing, the Commission or designated authority will take such action within 90 days after the petition is filed.

(k)(1) If the Commission or the designated authority grants the petition for reconsideration in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which reconsideration is sought;

(ii) Remand the matter to a bureau or other Commission personnel for such further proceedings, including rehearing, as may be appropriate; or

(iii) Order such other proceedings as may be necessary or appropriate.

(2) If the Commission or designated authority initiates further proceedings, a ruling on the merits of the matter will be deferred pending completion of such proceedings. Following completion of such further proceedings, the Commission or designated authority

may affirm, reverse, or modify its original order, or it may set aside the order and remand the matter for such further proceedings, including rehearing, as may be appropriate.

(3) Any order disposing of a petition for reconsideration which reverses or modifies the original order is subject to the same provisions with respect to reconsideration as the original order. In no event, however, shall a ruling which denies a petition for reconsideration be considered a modification of the original order. A petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious.

NOTE: For purposes of this section, the word "order" refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the "memorandum opinion" or other material which often accompany and explain the order.

(l) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or the designated authority believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

(m) The filing of a petition for reconsideration is not a condition precedent to judicial review of any action taken by the Commission or by the designated authority, except where the person seeking such review was not a party to the proceeding resulting in the action, or relies on questions of fact or law upon which the Commission or designated authority has been afforded no opportunity to pass. (See § 1.115(c).) Persons in those categories who meet the requirements of this section may qualify to seek judicial review by filing a petition for reconsideration.

(n) Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof. However, upon good

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cause shown, the Commission will stay the effectiveness of its order or requirement pending a decision on the petition for reconsideration. (This paragraph applies only to actions of the Commission en banc. For provisions applicable to actions under delegated authority, see § 1.102.)

(o) Petitions for reconsideration of licensing actions, as well as oppositions and replies thereto, that are filed with respect to the Wireless Radio Services, may be filed electronically via ULS.

(p) Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that:

(1) Fail to identify any material error, omission, or reason warranting reconsideration;

(2) Rely on facts or arguments which have not previously been presented to the Commission and which do not meet the requirements of paragraphs (b)(2), (b)(3), or (c) of this section;

(3) Rely on arguments that have been fully considered and rejected by the Commission within the same proceeding;

(4) Fail to state with particularity the respects in which petitioner believes the action taken should be changed as required by paragraph (d) of this section;

(5) Relate to matters outside the scope of the order for which reconsideration is sought;

(6) Omit information required by these rules to be included with a petition for reconsideration, such as the affidavit required by paragraph (e) of this section (relating to electrical interference);

(7) Fail to comply with the procedural requirements set forth in paragraphs (f) and (i) of this section;

(8) relate to an order for which reconsideration has been previously denied on similar grounds, except for petitions which could be granted under paragraph (c) of this section; or

(9) Are untimely.

(Secs. 4, 303, 307, 405, 48 Stat., as amended, 1066, 1082, 1083, 1095; 47 U.S.C. 154, 303, 307, 405)

[28 FR 12415, Nov. 22, 1963, as amended at 37 FR 7507, Apr. 15, 1972; 41 FR 1287, Jan. 7, 1976; 44 FR 60294, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981; 62 FR 4170, Jan. 29, 1997; 63 FR 68920, Dec. 14, 1998; 76 FR 24391, May 2, 2011]

§ 1.108 Reconsideration on Commission's own motion.

The Commission may, on its own motion, reconsider any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b). When acting on its own motion under this section, the Commission may take any action it could take in acting on a petition for reconsideration, as set forth in § 1.106(k).

[76 FR 24392, May 2, 2011]

§ 1.110 Partial grants; rejection and designation for hearing.

Where the Commission without a hearing grants any application in part, or with any privileges, terms, or conditions other than those requested, or subject to any interference that may result to a station if designated application or applications are subsequently granted, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing.

§ 1.113 Action modified or set aside by person, panel, or board.

(a) Within 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion.

(b) Within 60 days after notice of any sanction imposed under delegated authority has been served on the person affected, the person, panel, or board