

Federal Communications Commission

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§ 1.211 Service.

Except as otherwise expressly provided in this chapter, all pleadings filed in a hearing proceeding shall be served upon all other counsel in the proceeding or, if a party is not represented by counsel, then upon such party. All such papers shall be accompanied by proof of service. For provisions governing the manner of service, see § 1.47.

[29 FR 8219, June 30, 1964]

PARTICIPANTS AND ISSUES

§ 1.221 Notice of hearing; appearances.

(a) Upon designation of an application for hearing, the Commission issues an order containing the following:

(1) A statement as to the reasons for the Commission's action.

(2) A statement as to the matters of fact and law involved, and the issues upon which the application will be heard.

(3) A statement as to the time, place, and nature of the hearing. (If the time and place are not specified, the order will indicate that the time and place will be specified at a later date.)

(4) A statement as to the legal authority and jurisdiction under which the hearing is to be held.

(b) The order designating an application for hearing is mailed to the applicant by the Reference Information Center of the Consumer and Governmental Affairs Bureau and this order or a summary thereof is published in the FEDERAL REGISTER. Reasonable notice of hearing will be given to the parties in all proceedings; and, whenever possible, the Commission will give at least 60 days notice of comparative hearings.

(c) In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, shall, within 20 days of the mailing of the notice of designation for hearing by the Reference Information Center of the Consumer and Governmental Affairs Bureau, file with the Commission, in triplicate, a written appearance stating that he will appear of the date fixed for hearing and present evidence on the issues specified in the order. Where an applicant fails to file such a written appearance within the time specified,

or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the application will be dismissed with prejudice for failure to prosecute.

(d) The Commission will on its own motion name as parties to the hearing any person found to be a party in interest.

(e) In order to avail himself of the opportunity to be heard, any person named as a party pursuant to paragraph (d) of this section shall, within 20 days of the mailing of the notice of his designation as a party, file with the Commission, in person or by attorney, a written appearance in triplicate, stating that he will appear at the hearing. Any person so named who fails to file this written statement within the time specified, shall, unless good cause for such failure is shown, forfeit his hearing rights.

(f)(1) A fee must accompany each written appearance filed with the Commission in certain cases designated for hearing. See subpart G, part 1 for the amount due. Except as provided in paragraph (g) of this section, the fee must accompany each written appearance at the time of its filing and must be in conformance with the requirements of subpart G of the rules. A written appearance that does not contain the proper fee, or is not accompanied by a deferral request as per § 1.1115 of the rules, shall be dismissed and returned to the applicant by the fee processing staff. The presiding judge will be notified of this action and may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the correct fee within the original 20 day filing period.

NOTE: If the parties file a settlement agreement prior to filing the Notice of Appearance or simultaneously with it, the hearing fee need not accompany the Notice of Appearance. In filing the Notice of Appearance, the applicant should clearly indicate that a settlement agreement has been filed. (The fact that there are ongoing negotiations that may lead to a settlement does not affect the requirement to pay the fee.) If a settlement agreement is not effectuated, the Presiding Judge will require immediate payment of the fee.

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(2) When a fee is required to accompany a written appearance as described in paragraph (f)(1) of this section, the written appearance must also contain FCC Registration Number (FRN) in conformance with subpart W of this part. The presiding judge will notify the party filing the appearance of the omitted FRN and dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the FRN within ten (10) business days of the date of notification.

(g) In comparative broadcast proceedings involving applicants for new facilities, where the hearing fee was paid before designation of the applications for hearing as required by the Public Notice described at §73.3571(c), §73.3572(d), or §73.3573(g) of this chapter, a hearing fee payment should not be made with the filing of the Notice of Appearance.

(h)(1) For program carriage complaints filed pursuant to §76.1302 of this chapter that the Chief, Media Bureau refers to an administrative law judge for an initial decision, each party, in person or by attorney, shall file a written appearance within five calendar days after the party informs the Chief Administrative Law Judge that it elects not to pursue alternative dispute resolution pursuant to §76.7(g)(2) of this chapter or, if the parties have mutually elected to pursue alternative dispute resolution pursuant to §76.7(g)(2) of this chapter, within five calendar days after the parties inform the Chief Administrative Law Judge that they have failed to resolve their dispute through alternative dispute resolution. The written appearance shall state that the party will appear on the date fixed for hearing and present evidence on the issues specified in the hearing designation order.

(2) If the complainant fails to file a written appearance by this deadline, or fails to file prior to the deadline either a petition to dismiss the proceeding without prejudice or a petition to accept, for good cause shown, a written appearance beyond such deadline, the Chief Administrative Law Judge shall dismiss the complaint with prejudice for failure to prosecute.

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(3) If the defendant fails to file a written appearance by this deadline, or fails to file prior to this deadline a petition to accept, for good cause shown, a written appearance beyond such deadline, its opportunity to present evidence at hearing will be deemed to have been waived. If the hearing is so waived, the Chief Administrative Law Judge shall expeditiously terminate the proceeding and certify to the Commission the complaint for resolution based on the existing record.

(5 U.S.C. 554. Sec. 309, 48 Stat. 1085, as amended; 47 U.S.C. 309)

[28 FR 12424, Nov. 22, 1963, as amended at 51 FR 19347, May 29, 1986; 52 FR 5288, Feb. 20, 1987; 55 FR 19154, May 8, 1990; 56 FR 25638, June 5, 1991; 64 FR 60725, Nov. 8, 1999; 66 FR 47895, Sept. 14, 2001; 67 FR 13223, Mar. 21, 2002; 76 FR 60672, Sept. 29, 2011]

§ 1.223 Petitions to intervene.

(a) Where, in cases involving applications for construction permits and station licenses, or modifications or renewals thereof, the Commission has failed to notify and name as a party to the hearing any person who qualifies as a party in interest, such person may acquire the status of a party by filing, under oath and not more than 30 days after the publication in the FEDERAL REGISTER of the hearing issues or any substantial amendment thereto, a petition for intervention showing the basis of its interest. Where such person's interest is based upon a claim that a grant of the application would cause objectionable interference under applicable provisions of this chapter to such person as a licensee or permittee of an existing or authorized station, the petition to intervene must be accompanied by an affidavit of a qualified radio engineer which shall show, either by following the procedures prescribed 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, the extent of such interference. Where the person's status as a party in interest is established, the petition to intervene will be granted.

(b) Any other person desiring to participate as a party in any hearing may file a petition for leave to intervene