

Federal Communications Commission

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which would otherwise have been performed by the Commission under §§ 1.273 through 1.282.

NOTE: To provide for an orderly completion of cases, exceptions and related pleadings filed after March 1, 1996, shall be directed to the Commission and will not be acted upon by the Review Board.

[62 FR 4171, Jan. 29, 1997]

§ 1.273 Waiver of initial or recommended decision.

When the Commission serves as the presiding officer, it will not issue an initial or recommended decision. When the Commission is not the presiding officer, at any time before the record is closed all parties to the proceeding may agree to waive an initial or recommended decision, and may request that the Commission issue a final decision or order in the case. If the Commission has directed that its review function in the case be performed by a commissioner or a panel of commissioners, the request shall be directed to the appropriate review authority. The Commission or such review authority may in its discretion grant the request, in whole or in part, if such action will best conduce to the proper dispatch of business and to the ends of justice.

[85 FR 63178, Oct. 6, 2020]

§ 1.274 Certification of the record to the Commission for decision when the Commission is not the presiding officer; presiding officer unavailability.

(a) When the Commission is not the presiding officer, and where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires, the Commission may direct that the record in a pending proceeding be certified to it for decision.

(b) When a presiding officer becomes unavailable to the Commission after the taking of evidence has been concluded, the Commission shall direct that the record be certified to it for decision. In that event, the Commission shall designate a new presiding officer in accordance with § 1.241 for the limited purpose of certifying the record to the Commission.

(c) In all other circumstances when the Commission is not the presiding of-

ficer, the presiding officer shall prepare and file an initial or recommended decision, which will be released in accordance with § 1.267.

(d) When a presiding officer becomes unavailable to the Commission after the taking of evidence has commenced but before it has been concluded, the Commission shall designate another presiding officer in accordance with § 1.241 to continue the hearing proceeding. Oral testimony already introduced shall not be reheard unless observation of the demeanor of the witness is essential to the resolution of the case.

(Sec. 409, 48 Stat. 1096, as amended; 47 U.S.C. 409)

[85 FR 63179, Oct. 6, 2020]

§ 1.276 Appeal and review of initial decision.

(a)(1) Within 30 days after the date on which public release of the full text of an initial decision is made, or such other time as the Commission may specify, any of the parties may appeal to the Commission by filing exceptions to the initial decision, and such decision shall not become effective and shall then be reviewed by the Commission, whether or not such exceptions may thereafter be withdrawn. It is the Commission's policy that extensions of time for filing exceptions shall not be routinely granted.

(2) Exceptions shall be consolidated with the argument in a supporting brief and shall not be submitted separately. As used in this subpart, the term *exceptions* means the document consolidating the exceptions and supporting brief. The brief shall contain (i) a table of contents, (ii) a table of citations, (iii) a concise statement of the case, (iv) a statement of the questions of law presented, and (v) the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific reference to the record and all legal or other materials relied on.

(b) The Commission may on its own initiative provide, by order adopted not later than 20 days after the time for filing exceptions expires, that an initial decision shall not become final, and that it shall be further reviewed or considered by the Commission.

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(c) In any case in which an initial decision is subject to review in accordance with paragraph (a) or (b) of this section, the Commission may, on its own initiative or upon appropriate requests by a party, take any one or more of the following actions:

(1) Hear oral argument on the exceptions;

(2) Require the filing of briefs;

(3) Prior to or after oral argument or the filing of exceptions or briefs, reopen the record and/or remand the proceedings to the presiding officer to take further testimony or evidence;

(4) Prior to or after oral argument or the filing of exceptions or briefs, remand the proceedings to the presiding officer to make further findings or conclusions; and

(5) Prior to or after oral argument or the filing of exceptions or briefs, issue, or cause to be issued by the presiding officer, a supplemental initial decision.

(d) No initial decision shall become effective before 50 days after public release of the full text thereof is made unless otherwise ordered by the Commission. The timely filing of exceptions, the further review or consideration of an initial decision on the Commission's initiative, or the taking of action by the Commission under paragraph (c) of this section shall stay the effectiveness of the initial decision until the Commission's review thereof has been completed. If the effective date of an initial decision falls within any further time allowed for the filing of exceptions, it shall be postponed automatically until 30 days after time for filing exceptions has expired.

(e) If no exceptions are filed, and the Commission has not ordered the review of an initial decision on its initiative, or has not taken action under paragraph (c) of this section, the initial decision shall become effective, an appropriate notation to that effect shall be entered in the docket of the case, and a "Public Notice" thereof shall be given by the Commission. The provisions of §1.108 shall not apply to such public notices.

(f) When any party fails to file exceptions within the specified time to an initial decision which proposes to deny its application, such party shall be deemed to have no interest in further

prosecution of its application, and its application may be dismissed with prejudice for failure to prosecute.

(Sec. 40, 48 Stat. 1096, as amended; 47 U.S.C. 409)

[28 FR 12425, Nov. 22, 1963, as amended at 41 FR 14873, Apr. 8, 1976]

§ 1.277 Exceptions; oral arguments.

(a) The consolidated supporting brief and exceptions to the initial decision (see §1.276(a)(2)), including rulings upon motions or objections, shall point out with particularity alleged material errors in the decision or ruling and shall contain specific references to the page or pages of the transcript of hearing, exhibit or order if any on which the exception is based. Any objection not saved by exception filed pursuant to this section is waived.

(b) Within the period of time allowed in §1.276(a) for the filing of exceptions, any party may file a brief in support of an initial decision, in whole or in part, which may contain exceptions and which shall be similar in form to the brief in support of exceptions (see §1.276(a)(2)).

(c) Except by special permission, the consolidated brief and exceptions will not be accepted if the exceptions and argument exceed 25 double-spaced typewritten pages in length. (The table of contents and table of citations are not counted in the 25 page limit; however, all other contents of and attachments to the brief are counted.) Within 10 days, or such other time as the Commission or delegated authority may specify, after the time for filing exceptions has expired, any other party may file a reply brief, which shall not exceed 25 double spaced typewritten pages and shall contain a table of contents and a table of citations. If exceptions have been filed, any party may request oral argument not later than five days after the time for filing replies to the exceptions has expired. The Commission or delegated authority, in its discretion, will grant oral argument by order only in cases where such oral presentations will assist in the resolution of the issues presented. Within five days after release of an order designating an initial decision for oral argument, as provided in paragraph (d) of this section, any party who wishes to