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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]

§ 1.89 Notice of violations.

(a) Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, any person who holds a license, permit or other authorization appearing to have violated any provision of the Communications Act or any provision of this chapter will, before revocation, suspension, or cease and desist proceedings are instituted, be served with a written notice calling these facts to his or her attention and requesting a statement concerning the matter. FCC Form 793 may be used for this purpose. The Notice of Violation may be combined with a Notice of Apparent Liability to Monetary Forfeiture. In such event, notwithstanding the Notice of Violation, the provisions of § 1.80 apply and not those of § 1.89.

(b) Within 10 days from receipt of notice or such other period as may be specified, the recipient shall send a written answer, in duplicate, directly to the Commission office originating the official notice. If an answer cannot be sent or an acknowledgment cannot be made within such 10-day period by reason of illness or other unavoidable circumstance, acknowledgment and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay.

(c) The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. In every instance the answer shall contain a statement of action taken to correct the condition or omission complained of and to preclude its recurrence. In addition:

(1) If the notice relates to violations that may be due to the physical or electrical characteristics of transmitting apparatus and any new apparatus is to be installed, the answer shall

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state the date such apparatus was ordered, the name of the manufacturer, and the promised date of delivery. If the installation of such apparatus requires a construction permit, the file number of the application shall be given, or if a file number has not been assigned by the Commission, such identification shall be given as will permit ready identification of the application.

(2) If the notice of violation relates to lack of attention to or improper operation of the transmitter, the name and license number of the operator in charge (where applicable) shall be given.

[48 FR 24890, June 3, 1983]

§ 1.91 Revocation and/or cease and desist proceedings; hearings.

(a) If it appears that a station license or construction permit should be revoked and/or that a cease and desist order should be issued, the Commission will issue an order directing the person to show cause why an order of revocation and/or a cease and desist order, as the facts may warrant, should not be issued.

(b) An order to show cause why an order of revocation and/or a cease and desist order should not be issued will designate for hearing the matters with respect to which the Commission is inquiring and will call upon the person to whom it is directed (the respondent) to file with the Commission a written appearance stating that the respondent will present evidence upon the matters specified in the order to show cause and, if required, appear before a presiding officer at a time and place to be determined, but no earlier than thirty days after the receipt of such order. However, if safety of life or property is involved, the order to show cause may specify a deadline of less than thirty days from the receipt of such order.

(c) To avail themselves of such opportunity for a hearing, respondents, personally or by counsel, shall file with the Commission, within twenty days of the mailing of the order or such shorter period as may be specified therein, a written appearance stating that they will present evidence on the matters specified in the order and, if required, appear before the presiding officer at a time and place to be determined. The

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presiding officer in his or her discretion may accept a late-filed appearance. However, a written appearance tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petition for acceptance of a late-filed appearance will be granted only if the presiding officer determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(d) Hearing proceedings on the matters specified in such orders to show cause shall accord with the practice and procedure prescribed in this subpart and subpart B of this part, with the following exceptions:

(1) In all such revocation and/or cease and desist hearings, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission; and

(2) The Commission may specify in a show cause order, when the circumstances of the proceeding require expedition, a time less than that prescribed in §§ 1.276 and 1.277 within which the initial decision in the proceeding shall become effective, exceptions to such initial decision must be filed, parties must file requests for oral argument, and parties must file notice of intention to participate in oral argument.

(e) Correction of or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or a cease and desist order should be issued.

(f) Any order of revocation and/or cease and desist order issued after hearing pursuant to this section shall include a statement of findings and the grounds therefor, shall specify the effective date of the order, and shall be

served on the person to whom such order is directed.

(Sec. 312, 48 Stat. 1086, as amended; 47 U.S.C. 312)

[28 FR 12415, Nov. 22, 1963, as amended at 85 FR 63172, Oct. 6, 2020]

§ 1.92 Revocation and/or cease and desist proceedings; after waiver of hearing.

(a) After the issuance of an order to show cause, pursuant to § 1.91, designating a matter for hearing, the occurrence of any one of the following events or circumstances will constitute a waiver of such hearing and the proceeding thereafter will be conducted in accordance with the provisions of this section.

(1) The respondent fails to file a timely written appearance as prescribed in § 1.91(c) indicating that the respondent will present evidence on the matters specified in the order and, if required by the order, that the respondent will appear before the presiding officer.

(2) The respondent, having filed a timely written appearance as prescribed in § 1.91(c), fails in fact to present evidence on the matters specified in the order or appear before the presiding officer in person or by counsel at the time and place duly scheduled.

(3) The respondent files with the Commission, within the time specified for a written appearance in § 1.91(c), a written statement expressly waiving his or her rights to a hearing.

(b) When a hearing is waived under the provisions of paragraph (a) (1) or (3) of this section, a written statement signed by the respondent denying or seeking to mitigate or justify the circumstances or conduct complained of in the order to show cause may be submitted within the time specified in § 1.91(c). The Commission in its discretion may accept a late statement. However, a statement tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petitions for acceptance of a late statement will be granted only if the Commission determines that the facts and reasons stated