

**Editorial Notes**

## CODIFICATION

“Reconsiderations” substituted in text for “Rehearings” as the probable intent of Congress, in view of amendment by section 127(c)(1) of Pub. L. 97-259, which substituted “reconsideration” for “rehearing” wherever appearing in this section.

## AMENDMENTS

1988—Pub. L. 100-594 designated existing provisions as subsec. (a), substituted “section 155(c)(1)” for “section 155(d)(1)” in two places, and added subsec. (b).

1982—Pub. L. 97-259 substituted “reconsideration” for “rehearing” wherever appearing and “the Commission gives public notice of the order, decision, report, or action complained of” for “public notice is given of orders disposing of all petitions for rehearing filed with the Commission in such proceeding or case, but any order, decision, report, or action made or taken after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order”.

1961—Pub. L. 87-192 provided for petition for rehearing to the authority making or taking the order, decision, report, or action, substituted references to report and action for requirement, wherever else appearing, and inserted references to proceeding by any designated authority within the Commission, wherever appearing.

1960—Pub. L. 86-752 substituted “any party” for “and party” in first sentence, and inserted sentence dealing with disposition of petitions for rehearing.

1952—Act July 16, 1952, provided for taking of newly discovered evidence and evidence which should have been taken in original hearing.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-752, §4(d)(4), Sept. 13, 1960, 74 Stat. 892, provided that: “The amendment made by paragraph (2) of subsection (c) of this section [amending this section] shall only apply to petitions for rehearing filed on or after the date of the enactment of this Act [Sept. 13, 1960].”

**§ 406. Compelling furnishing of facilities; mandamus; jurisdiction**

The district courts of the United States shall have jurisdiction upon the relation of any person alleging any violation, by a carrier subject to this chapter, of any of the provisions of this chapter which prevent the relator from receiving service in interstate or foreign communication by wire or radio, or in interstate or foreign transmission of energy by radio, from said carrier at the same charges, or upon terms or conditions as favorable as those given by said carrier for like communication or transmission under similar conditions to any other person, to issue a writ or writs of mandamus against said carrier commanding such carrier to furnish facilities for such communication or transmission to the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper pending the determination of the question of fact: *Provided further*, That the remedy given by writ of man-

damus shall be cumulative and shall not be held to exclude or interfere with other remedies provided by this chapter.

(June 19, 1934, ch. 652, title IV, §406, 48 Stat. 1095.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

**§ 407. Order for payment of money; petition for enforcement; procedure; order of Commission as prima facie evidence; costs; attorneys’ fees**

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the line of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suits the findings and order of the Commission shall be prima facie evidence of the facts therein stated, except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail, he shall be allowed a reasonable attorney’s fee, to be taxed and collected as a part of the costs of the suit.

(June 19, 1934, ch. 652, title IV, §407, 48 Stat. 1095.)

**§ 408. Order not for payment of money; when effective**

Except as otherwise provided in this chapter, all orders of the Commission, other than orders for the payment of money, shall take effect thirty calendar days from the date upon which public notice of the order is given, unless the Commission designates a different effective date. All such orders shall continue in force for the period of time specified in the order or until the Commission or a court of competent jurisdiction issues a superseding order.

(June 19, 1934, ch. 652, title IV, §408, 48 Stat. 1096; Pub. L. 97-259, title I, §123, Sept. 13, 1982, 96 Stat. 1098.)

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is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

#### AMENDMENTS

1982—Pub. L. 97-259 substituted provision that all orders of the Commission but for payment of money shall take effect thirty calendar days from the date upon which public notice of the order is given, unless the Commission designates a different effective date, and that such orders shall continue in force for the period of time specified in the order or until the Commission or a court of competent jurisdiction issues a superseding order, for provision that such orders would take effect within such reasonable time, not less than thirty days after service of the order, and would continue in force until its further order, or for a specified period of time, as prescribed in the order, unless the same were suspended or modified or set aside by the Commission, or suspended or set aside by a court of competent jurisdiction.

### § 409. Hearings

#### (a) Filing of initial decisions; exceptions

In every case of adjudication (as defined in section 551 of title 5) which has been designated by the Commission for hearing, the person or persons conducting the hearing shall prepare and file an initial, tentative, or recommended decision, except where such person or persons become unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision.

#### (b) Exceptions to initial decisions; memoranda; determination of Commission or authority within Commission; prohibition against consideration of own decision

In every case of adjudication (as defined in section 551 of title 5) which has been designated by the Commission for hearing, any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to the initial, tentative, or recommended decision, which shall be passed upon by the Commission or by the authority within the Commission, if any, to whom the function of passing upon the exceptions is delegated under section 155(d)(1)<sup>1</sup> of this title: *Provided, however,* That such authority shall not be the same authority which made the decision to which the exception is taken.

#### (c) Notice and opportunity for participation by parties; applicability of administrative procedure provisions

(1) In any case of adjudication (as defined in section 551 of title 5) which has been designated by the Commission for a hearing, no person who has participated in the presentation or preparation for presentation of such case at the hearing or upon review shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case to the hearing officer or officers or to the Commission, or to any authority within the Commission to whom, in such case, review functions have been delegated by the Commission under

section 155(d)(1)<sup>1</sup> of this title, unless upon notice and opportunity for all parties to participate.

(2) The provision in section 554(d) of title 5 which states that such subsection shall not apply in determining applications for initial licenses, shall not be applicable hereafter in the case of applications for initial licenses before the Federal Communications Commission.

#### (d) Applicability of administrative procedure provisions

To the extent that the foregoing provisions of this section and section 155(d)<sup>1</sup> of this title are in conflict with the provisions of subchapter II of chapter 5, and chapter 7, of title 5, such provisions of this section and section 155(d)<sup>1</sup> of this title shall be held to supersede and modify the provisions of subchapter II of chapter 5, and chapter 7, of title 5.

#### (e) Subpenas; witnesses; production of documents; fees and mileage

For the purposes of this chapter the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

#### (f) Designated place of hearing; aid in enforcement of orders

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

#### (g) Contempts

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier or licensee or other person, issue an order requiring such common carrier, licensee, or other person to appear before the Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

#### (h) Depositions

The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any United States magistrate judge, or any clerk of a district court, or

<sup>1</sup> See References in Text note below.