

balance sheet and profit and loss statement; facts showing, under all the circumstances, that it would not be reasonable to expect added resources of individuals composing the group to be pooled to meet the expenses of participating in the proceeding; and an estimate of the cost of participation. Personal financial information pertaining to members of the group may be submitted to the presiding officer in confidence.

(d) If the motion is granted, the presiding officer may direct that a free copy of the transcript of testimony be made available to the moving party and may relax the rules of procedure in any manner which will ease his financial burden, is fair to other parties to the proceeding, and does not involve the payment of appropriated funds to a party.

[41 FR 53021, Dec. 3, 1976]

§ 1.225 Participation by non-parties; consideration of communications.

(a) Any person who wishes to appear and give evidence on any matter and who so advises the Secretary, will be notified by the Secretary if that matter is designated for hearing. In the case of requests bearing more than one signature, notice of hearing will be given to the person first signing unless the request indicates that such notice should be sent to someone other than such person.

(b) No person shall be precluded from giving any relevant, material, and competent testimony at a hearing because he lacks a sufficient interest to justify his intervention as a party in the matter.

(c) When a hearing is held, no communication will be considered in determining the merits of any matter unless it has been received into evidence. The admissibility of any communication shall be governed by the applicable rules of evidence, and no communication shall be admissible on the basis of a stipulation unless Commission counsel as well as counsel for all of the parties shall join in such stipulation.

§ 1.227 Consolidations.

(a) The Commission, upon motion or upon its own motion, will, where such action will best conduce to the proper

dispatch of business and to the ends of justice, consolidate for hearing:

(1) Any cases which involve the same applicant or involve substantially the same issues, or

(2) Any applications which present conflicting claims, except where a random selection process is used.

(b)(1) In broadcast cases, except as provided in paragraph (b)(5) of this section, and except as otherwise provided in § 1.1601, *et seq.*, no application will be consolidated for hearing with a previously filed application or applications unless such application, or such application as amended, if amended so as to require a new file number, is substantially complete and tendered for filing by the close of business on the day preceding the day designated by Public Notice as the day any one of the previously filed applications is available and ready for processing.

(2) In other than broadcast, common carrier, and safety and special radio services cases, any application that is mutually exclusive with another application or applications already designated for hearing will be consolidated for hearing with such other application or applications only if the later application in question has been filed within 5 days after public notice has been given in the FEDERAL REGISTER of the Commission's order which first designated for hearing the prior application or applications with which such application is in conflict.

(3) Common carrier cases: (i) *General rule.* Where an application is mutually exclusive with a previously filed application, the second application will be entitled to comparative consideration with the first or entitled to be included in a random selection process, only if the second has been properly filed at least one day before the Commission takes action on the first application. Specifically, the later filed application must have been received by the Commission, in a condition acceptable for filing, before the close of business on the day prior to the grant date or designation date of the earlier filed application.

(ii) *Domestic public fixed and public mobile.* See Rule §§ 21.31 and 22.31 for the requirements as to mutually exclusive applications. See also Rule §§ 21.23 and

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22.23 for the requirements as to amendments of applications.

(iii) *Public coast stations (Maritime mobile service)*. See paragraph (b)(4) of this section.

(4) This paragraph applies when mutually-exclusive applications subject to section 309(b) of the Communications Act are filed in the Private Radio Services or when there are more such applications for initial licenses than can be accommodated on available frequencies. In such cases, the applications either will be consolidated for hearing or designated for random selection (see § 1.972 of this part). An application which is substantially amended (as defined by § 1.962(c) of this part) will, for the purpose of this section, be considered to be a newly-filed application as of the receipt date of the amendment. Except for applications filed under part 94, Private Operational Fixed Microwave Service, mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at part 1, subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational Fixed Microwave Service, mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day.

(5) Any mutually exclusive application filed after the date prescribed in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section will be dismissed without prejudice and will be eligible for re-filing only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket.

(6) An application which is mutually exclusive with an application for renewal of license of a broadcast station filed on or before May 1, 1995 will be designated for comparative hearing with such license renewal application

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if it is substantially complete and tendered for filing no later than the date prescribed in § 73.3516(e).

[28 FR 12425, Nov. 22, 1963, as amended at 34 FR 7966, May 21, 1969; 37 FR 13983, July 15, 1972; 38 FR 26202, Sept. 19, 1973; 48 FR 27200, June 13, 1983; 48 FR 34039, July 27, 1983; 52 FR 10229, Mar. 31, 1987; 55 FR 46008, Oct. 31, 1990; 55 FR 46513, Nov. 5, 1990; 61 FR 18291, Apr. 25, 1996]

§ 1.229 Motions to enlarge, change, or delete issues.

(a) A motion to enlarge, change or delete the issues may be filed by any party to a hearing. Except as provided for in paragraph (b) of this section, such motions must be filed within 15 days after the full text or a summary of the order designating the case for hearing has been published in the FEDERAL REGISTER.

(b)(1) In comparative broadcast proceedings involving applicants for only new facilities, such motions shall be filed within 30 days of the release of the designation order, except that persons not named as parties to the proceeding in the designation order may file such motions with their petitions to intervene up to 30 days after publication of the full text or a summary of the designation order in the FEDERAL REGISTER. (See § 1.223 of this part).

(2) In comparative broadcast proceedings involving renewal applicants, such motions shall be filed within 30 days after publication of the full text or a summary of the designation order in the FEDERAL REGISTER.

(3) Any person desiring to file a motion to modify the issues after the expiration of periods specified in paragraphs (a), (b)(1), and (b)(2), of this section, shall set forth the reason why it was not possible to file the motion within the prescribed period. Except as provided in paragraph (c) of this section, the motion will be granted only if good cause is shown for the delay in filing. Motions for modifications of issues which are based on new facts or newly discovered facts shall be filed within 15 days after such facts are discovered by the moving party.

(c) In the absence of good cause for late filing of a motion to modify the issues, the motion to enlarge will be considered fully on its merits if (and