

§ 402. Judicial review of Commission's orders and decisions

(a) Procedure

Any proceeding to enjoin, set aside, annul, or suspend any order of the Commission under this chapter (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed in chapter 158 of title 28.

(b) Right to appeal

Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit or station license, whose application is denied by the Commission.

(2) By any applicant for the renewal or modification of any such instrument of authorization whose application is denied by the Commission.

(3) By any party to an application for authority to transfer, assign, or dispose of any such instrument of authorization, or any rights thereunder, whose application is denied by the Commission.

(4) By any applicant for the permit required by section 325 of this title whose application has been denied by the Commission, or by any permittee under said section whose permit has been revoked by the Commission.

(5) By the holder of any construction permit or station license which has been modified or revoked by the Commission.

(6) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1), (2), (3), (4), and (9) of this subsection.

(7) By any person upon whom an order to cease and desist has been served under section 312 of this title.

(8) By any radio operator whose license has been suspended by the Commission.

(9) By any applicant for authority to provide interLATA services under section 271 of this title whose application is denied by the Commission.

(10) By any person who is aggrieved or whose interests are adversely affected by a determination made by the Commission under section 618(a)(3) of this title.

(c) Filing notice of appeal; contents; jurisdiction; temporary orders

Such appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. Such notice of appeal shall contain a concise statement of the nature of the proceedings as to which the appeal is taken; a concise statement of the reasons on which the appellant intends to rely, separately stated and numbered; and proof of service of a true copy of said notice and statement upon the Commission. Upon filing of such notice, the court shall have jurisdiction of the proceedings and of the questions determined therein and shall have power, by order, directed to the Commission or any other party to the appeal, to

grant such temporary relief as it may deem just and proper. Orders granting temporary relief may be either affirmative or negative in their scope and application so as to permit either the maintenance of the status quo in the matter in which the appeal is taken or the restoration of a position or status terminated or adversely affected by the order appealed from and shall, unless otherwise ordered by the court, be effective pending hearing and determination of said appeal and compliance by the Commission with the final judgment of the court rendered in said appeal.

(d) Notice to interested parties; filing of record

Upon the filing of any such notice of appeal the appellant shall, not later than five days after the filing of such notice, notify each person shown by the records of the Commission to be interested in said appeal of the filing and pendency of the same. The Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28.

(e) Intervention

Within thirty days after the filing of any such appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interest would be adversely affected by a reversal or modification of the order of the Commission complained of shall be considered an interested party.

(f) Records and briefs

The record and briefs upon which any such appeal shall be heard and determined by the court shall contain such information and material, and shall be prepared within such time and in such manner as the court may by rule prescribe.

(g) Time of hearing; procedure

The court shall hear and determine the appeal upon the record before it in the manner prescribed by section 706 of title 5.

(h) Remand

In the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission, in the absence of the proceedings to review such judgment, to forthwith give effect thereto, and unless otherwise ordered by the court, to do so upon the basis of the proceedings already had and the record upon which said appeal was heard and determined.

(i) Judgment for costs

The court may, in its discretion, enter judgment for costs in favor of or against an appellant, or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

(j) Finality of decision; review by Supreme Court

The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 1254 of title 28, by the appellant, by the Commission, or by any interested party intervening in the appeal, or by certification by the court pursuant to the provisions of that section.

(June 19, 1934, ch. 652, title IV, § 402, 48 Stat. 1093; May 20, 1937, ch. 229, §§ 11–13, 50 Stat. 197; May 24, 1949, ch. 139, § 132, 63 Stat. 108; July 16, 1952, ch. 879, § 14, 66 Stat. 718; Pub. L. 85–791, § 12, Aug. 28, 1958, 72 Stat. 945; Pub. L. 97–259, title I, §§ 121, 127(b), Sept. 13, 1982, 96 Stat. 1097, 1099; Pub. L. 98–620, title IV, § 402(50), Nov. 8, 1984, 98 Stat. 3361; Pub. L. 104–104, title I, § 151(b), Feb. 8, 1996, 110 Stat. 107; Pub. L. 111–260, title I, § 104(d), Oct. 8, 2010, 124 Stat. 2762.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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.

AMENDMENTS

2010—Subsec. (b)(10). Pub. L. 111–260 added par. (10).
1996—Par. (6). Pub. L. 104–104, § 151(b)(1), inserted reference to par. (9).

Subsec. (b)(9). Pub. L. 104–104, § 151(b)(2), added par. (9).

1984—Subsec. (g). Pub. L. 98–620 substituted “The” for “At the earliest convenient time the” and “706 of title 5” for “10(e) of the Administrative Procedure Act [former 5 U.S.C. 1009(e)]”.

1982—Subsec. (a). Pub. L. 97–259, § 127(b), substituted “chapter 158 of title 28” for “Public Law 901, Eighty-first Congress, approved December 29, 1950”.

Subsec. (d). Pub. L. 97–259, § 121, substituted “appellant” for “Commission”, “filing of such notice” for “date of service upon it”, struck out “and shall thereafter permit any such person to inspect and make copies of said notice and statement of reasons therefor at the office of the Commission in the city of Washington” after “pendency of the same”, and substituted “The” for “Within thirty days after the filing of an appeal, the” before “Commission shall file”.

1958—Subsec. (d). Pub. L. 85–791 substituted “the record upon which the order complained of was entered, as provided in section 2112 of title 28,” for “a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order” in second sentence.

1952—Act July 16, 1952, amended section generally to set up the procedure for the judicial review of the Commission's orders and decisions.

1949—Subsec. (a). Act May 24, 1949, substituted “Title 28 of the United States Code” for “the Act of October 22, 1913 (38 Stat. 219)”, and “such Title 28” in lieu of “that Act”.

1937—Subsec. (a). Act May 20, 1937, § 11, inserted “, or suspending a radio operator's license” after “or for modifications of an existing radio station license”.

Subsec. (b)(3). Act May 20, 1937, § 12, added par. (3) relating to appeal from decisions in case of any radio operator whose license has been suspended by the Commission.

Subsec. (c). Act May 20, 1937, § 13, inserted in last sentence “or order” after “upon the application”.

CHANGE OF NAME

Act June 7, 1934, ch. 426, 48 Stat. 926, changed name of “Court of Appeals of the District of Columbia” to “United States Court of Appeals for the District of Columbia”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 19(2) of act July 16, 1952, provided that: “The amendments made by this Act to section 402 of the Communications Act of 1934 [this section] (relating to judicial review of orders and decisions of the Commission) shall not apply with respect to any action or appeal which is pending before any court on the date of enactment of this Act [July 16, 1952].”

ADMINISTRATIVE ORDERS REVIEW ACT

Court of appeals exclusive jurisdiction respecting final orders of Federal Communications Commission made reviewable by subsec. (a) of this section, see section 2342 of Title 28, Judiciary and Judicial Procedure.

§ 403. Inquiry by Commission on its own motion

The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter. The Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this chapter, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had, excepting orders for the payment of money.

(June 19, 1934, ch. 652, title IV, § 403, 48 Stat. 1094.)

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.

§ 404. Reports of investigations

Whenever an investigation shall be made by the Commission it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

(June 19, 1934, ch. 652, title IV, § 404, 48 Stat. 1094.)