

nally 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.)

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.

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.

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