

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Procedural Rules Governing)	MB Docket No. 17-245
Formal Complaint Proceeding Delegated to)	
the EB)	

REPLY COMMENTS OF CONSUMER GROUPS AND RERCs

**Telecommunications for the Deaf and Hard of Hearing, Inc.
American Foundation for the Blind
Cerebral Palsy and Deaf Organization
California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.
Hearing Loss Association of America
National Association of the Deaf
Rehabilitation Engineering Research Center on Universal Interface & Information
Technology Access, Trace Research & Development Center, University of Maryland
Rehabilitation Engineering Research Center on Technology for the
Deaf and Hard of Hearing, Gallaudet University**

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), by its attorneys, the Institute for Public Representation, along with the American Foundation for the Blind (AFB), California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH), Cerebral Palsy and Deaf Organization (CPADO), Hearing Loss Association of America (HLAA), National Association of the Deaf (NAD) (collectively, “Consumer Groups”) and Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access at Trace Research & Development Center (Trace RERC) at University of Maryland and Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing (DHH-RERC) at Gallaudet University (collectively, “RERCs”), respectfully submit these reply

comments in response to comments filed with the Federal Communications Commission (“FCC” or “Commission”) in the above-referenced proceeding.¹

Consumer Groups seek to promote equal access to telecommunications for the 48 million Americans who are deaf, hard of hearing, or late-deafened, the more than 20 million Americans who are blind, visually impaired, or deafblind, and those who are deaf or blind with mobility or cognitive disabilities. As advocates for technology and telecommunications policy that advances the public interest, RERCs strongly supports the Consumer Groups’ goals.

Consumer Groups and RERCs continue to support a uniform formal complaint process. We write to address certain proposals, primarily regarding Section 208 and pole attachment complaints, that, if adopted and applied to disability access complaints, would increase the burden on complainants and delay resolution of the underlying dispute.

Some commenters explicitly or implicitly ask the Commission to increase burdens and delay resolution of disputes. For example, certain commenters request that the Commission expand the scope of discovery² or remove measures that help limit the scope of discovery.³ Others implicitly ask the Commission to push back the deadlines for answers and replies to after all discovery requests have been fulfilled.⁴ One commenter also asks the Commission to give 45 days, instead of the proposed 30 days, to file answers.⁵ To accommodate these expansions, some

¹ *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, NPRM, EB Docket No. 17-245 (Sept. 18, 2017) (“2017 NPRM”).

² See, e.g., EEI comment at 4; Electric Utilities comment at 5 (asking for mini-trials); NCTA comments at 4 (requesting 25 interrogatories for each party).

³ Verizon comment at 5 (asking the Commission remove information designations or at least requirements that parties identify individuals with information in those designations).

⁴ See EEI comment at 5; CEHE comment at 1-2.

⁵ Verizon comment at 4.

commenters oppose shot clocks,⁶ ask for a late triggering event for shot clocks,⁷ or suggest that shot clocks should be paused under numerous circumstances.⁸

The reasons these commenters give for requesting these changes are unsubstantiated when the proposed formal complaint rules are considered together. The main point of their arguments are, in essence, that the Commission's proposed rules are unfair because defendants might not be able to obtain all relevant information through discovery, adequately make use of the information they obtain, or fully develop their arguments in the time allotted resulting in an unjust result for defendants.⁹

The proposed rules balance the interests of fairness and timely resolution to achieve a just result for both parties.

- *Discovery, Information Designations, and Use of Information Obtained via Discovery* – The discovery process does not need to be expanded or extended because pre-filing settlement discussions and information designations help parties learn the most important issues in the dispute and target their discovery requests to the information that is relevant to those issues. Nor should the Commission allow parties to delay filing answers and replies until after all discovery requests are fulfilled. As the Electric Utilities put it, “information designations will allow for a more in-depth development of the facts in dispute . . . , as well as greater symmetry in the knowledge each party has regarding those facts . . . likely lead[ing] to a narrowing of the issues in dispute, an increase in settlements, and an increase in the factual information available to Commission staff where formal disposition is required.”¹⁰ And the Commission has previously found that information designations – specifically those identifying individuals within an organization that have knowledge of the particular issues – are designed to help augment

⁶ CEHE comment at 2.

⁷ EEI comment at 6 (stating that the clock should start after briefing is complete).

⁸ Electric Utilities at 8.

⁹ See, e.g., EEI comment at 3-4; Electric Utilities comment at 5. Verizon even claims, without evidence, that it needs more time to file an answer to a complaint at the Commission than it would in a federal court. Verizon comment at 4.

¹⁰ Electric Utilities comment at 4.

the abbreviated discovery process for formal complaints.¹¹ Thus, all parties will be able to adequately develop their arguments under the proposed discovery process.

- *Answers* – The 30-day deadline for answers is reasonable by itself, but any burden on defendant’s will be further reduced by the Commission’s proposal to remove requirements that complaints, answers, and replies include findings of fact, conclusions of law, and legal analysis.¹² If that is still not enough, parties can seek an extension. Thus, the Commission should not extend the deadline for answers.
- *Shot Clocks* – Consumer Groups & RERCs reassert our support for applying shot clocks to all three types of formal complaints. The Commission should not adopt commenter suggestions that would only serve to undermine the timely resolution of complaints that shot clocks are designed to achieve. We agree with Verizon that starting the shot clock when the complaint is filed will provide parties with plenty of time to submit legal analyses and material facts and that the shot clock should only be paused sparingly, when there are unforeseen circumstances.¹³ Consumer Groups & RERCs also do not think it is necessary to set the shot clock beyond 5 months (150 days) after a complaint is filed. Congress clearly thought that was a sufficient amount of time for the Commission to gather all relevant information and make a reasoned decision on the facts when it directed the Commission to resolve Section 208 complaints within that timeframe.¹⁴ No commenter has provided evidence to suggest that the same is not true for pole attachment and disability access complaints. In accordance with the Commission’s goal to have consistent formal complaint rules and to ensure formal complaints are timely resolved, the Commission should apply the 5-month shot clock from when a complaint is filed to all three types of formal complaint proceedings.

In any case, the commenters’ proposals would have a disproportionate and unfair impact on those who are least able to protect their interests. As Consumer Groups and RERCs stated in their initial comment, “when formal complaints become necessary, it is vital these procedures are not too burdensome on complainants.”¹⁵ That is because, unlike most companies, consumers and consumer groups do not have the ability to manage a resource-intensive and protracted formal complaint process. Such a process might deter these parties from bringing a formal complaint

¹¹ *Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers*, 63 FR 990-01 (1998) (“We conclude that such mandatory information designation will simplify, expedite, and, in some cases, eliminate the need for time-consuming discovery.”).

¹² 2017 NPRM at ¶ 13. *See also* Electric Utilities comment at 3 (stating that in its experience, “30 days has been a fair length of time to answer a pole attachment complaint”).

¹³ Verizon comment at 3.

¹⁴ 47 U.S.C. § 208.

¹⁵ Consumer Groups and RERC comment at 2.

even when they have a cognizable harm. Even if they do file a formal complaint, a lengthier process means that consumers would unnecessarily sustain the harm the dispute is designed to address for a longer amount of time.

Consistent with the desire for timely and affordable resolution of formal complaints, Consumer Groups and RERCs agree with the Electric Utilities that the Commission should adopt proposed rule 1.737(b), which would allow for more opportunities for resolution through mediation.¹⁶ Mediation is usually the fastest and cheapest way to resolve a complaint for both parties. Thus, by allowing for mediation to take place at any time during a proceeding, the parties can quickly and efficiently resolve disputes when it becomes apparent that the remainder of the formal complaint process is unnecessary.

Finally, Consumer Groups and RERCs ask that the Commission decline to entertain Verizon's other proposals related to the FCC's enforcement procedures.¹⁷

Conclusion

Accordingly, Consumer Groups and RERCs ask that the Commission not adopt proposals that would unnecessarily delay the resolution of formal complaints, at least so far as they apply to disability access complaints, as such proposals could reduce the ability of individuals who are deaf, hard of hearing, late-deafened, blind, visually impaired, deafblind, or those who are deaf or blind with mobility or cognitive disabilities from accessing essential telecommunications technologies.

¹⁶ Electric Utilities comment at 7

¹⁷ Verizon comment at 7-11.

Respectfully submitted,

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