

APPENDIX B

Final Rules

The Federal Communications Commission amends Parts 1, 6 and 7 and adds new Part 14 of Title 47 of the Code of Federal Regulations as follows:

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 reads as follows:

AUTHORITY: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154, 160, 201, 225, 303, 617 and 618.

2. The Federal Communications Commission amends § 1.80 by redesignating paragraphs (b)(3), (b)(4), and (b)(5) as paragraphs (b)(4), (b)(5) and (b)(6) and by adding new paragraph(b)(3) and revising newly redesignated paragraph (b)(5) to read as follows:

§ 1.80 Forfeiture Proceedings

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(b) * * *

(3) If the violator is a manufacturer or service provider subject to the requirements of Section 255, 716 or 718 of the Communications Act, and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than \$100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.

(4) ***

(5) In any case not covered in paragraphs (b)(1), (b)(2), (b)(3), or (b)(4) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$112,500 for any single act or failure to act described in paragraph (a) of this section.

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Part 6 of Title 47 of the Code of Federal Regulations is amended as follows:

3. The authority citation for Part 6 reads as follows:

AUTHORITY: 47 U.S.C. 151-154, 251, 255, 303(r), 617, 618.

4. The Federal Communications Commission amends Part 6 by revising §§ 6.15 and 6.16 as follows.

§ 6.15 Generally.

(a) All manufacturers of telecommunications equipment or customer premises equipment and all providers of telecommunications services, as defined under this subpart are subject to the enforcement provisions specified in the Act and the Commission's rules.

(b) For purposes of 6.15 through 6.23, the term “manufacturers” shall denote manufacturers of telecommunications equipment or customer premises equipment and the term “providers” shall denote providers of telecommunications services.

§ 6.16 Informal or formal complaints

Sections 6.17 through 6.23 of this subpart shall sunset on October 8, 2013. On October 8, 2013, any person may file either a formal or informal complaint against a manufacturer or provider alleging violations of Section 255 or this Part subject to the enforcement requirements set forth in §§ 14.30 through 14.52 of this chapter.

Part 7 of Title 47 of the Code of Federal Regulations is amended as follows:

5. The authority citation for Part 7 reads as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 208, 255, 617, 618.

6. The Federal Communications Commission amends Part 7 by revising §§ 7.15 and 7.16 as follows:

§ 7.15 Generally

(a) For purposes of §§ 7.15–7.23 of this subpart, the term “manufacturers” shall denote any manufacturer of telecommunications equipment or customer premises equipment which performs a voicemail or interactive menu function.

(b) All manufacturers of telecommunications equipment or customer premises equipment and all providers of voicemail and interactive menu services, as defined under this subpart, are subject to the enforcement provisions specified in the Act and the Commission’s rules.

(c) The term “providers” shall denote any provider of voicemail or interactive menu service.

§ 7.16 Informal or formal complaints

Section 7.17 through 7.23 of this subpart shall sunset on October 8, 2013. On October 8, 2013, any person may file either a formal or informal complaint against a manufacturer or provider alleging violations of Section 255 or this Part subject to the enforcement requirements set forth in §§ 14.30 through 14.52 of this chapter.

Title 47 of the Code of Federal Regulations is amended by adding the following new Part 14:

PART 14 - ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

Subpart A – Scope

- § 14.1 Applicability.
- § 14.2 Limitations.
- § 14.3 Exemption for Customized Equipment or Services.
- § 14.4 Exemption for Small Entities.
- § 14.5 Waivers – Multi-purpose Services and Equipment.

Subpart B – Definitions

- § 14.10 Definitions.

Subpart C – Implementation Requirements – What must Covered Entities Do?

- § 14.20 Obligations.
- § 14.21 Performance Objectives.

Subpart D – Recordkeeping, Consumer Dispute Assistance, and Enforcement

- § 14.30 Generally.
- § 14.31 Recordkeeping.
- § 14.32 Consumer Dispute Assistance.
- § 14.33 Informal or formal complaints.
- § 14.34 Informal complaints; form, filing, content, and consumer assistance.
- § 14.35 Procedure; designation of agents for service.
- § 14.36 Answers and Replies to informal complaints.
- § 14.37 Review and disposition of informal complaints.
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- § 14.44 Replies.
- § 14.45 Motions.
- § 14.46 Formal complaints not stating a cause of action; defective pleadings.
- § 14.47 Discovery.
- § 14.48 Confidentiality of information produced or exchanged by the parties.
- § 14.49 Other required written submissions.
- § 14.50 Status conference.
- § 14.51 Specifications as to pleadings, briefs, and other documents; subscription.
- § 14.52 Copies; service; separate filings against multiple defendants.

AUTHORITY: 47 U.S.C. 151-154, 255, 303, 403, 503, 617, 618 unless otherwise noted.

Subpart A – Scope**§ 14.1 Applicability.**

Except as provided in §§ 14.2, 14.3, 14.4 and 14.5 of this chapter, the rules in this part apply to:

- (a) Any manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, that such manufacturer offers for sale or otherwise distributes in interstate commerce;
- (b) Any provider of advanced communications services that such provider offers in or affecting interstate commerce.

§ 14.2 Limitations.

- (a) Except as provided in paragraph (b), no person shall be liable for a violation of the requirements of the rules in this part with respect to advanced communications services or equipment used to provide or access advanced communications services to the extent such person--
 - (1) transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of advanced communications services by a third party; or
 - (2) provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access to such advanced communications services or equipment used to provide or access advanced communications services.
- (b) The limitation on liability under paragraph (a) shall not apply to any person who relies on third party applications, services, software, hardware, or equipment to comply with the requirements of the rules in this part with respect to advanced communications services or equipment used to provide or access advanced communications services.
- (c) The requirements of this part shall not apply to any equipment or services, including interconnected VoIP service, that were subject to the requirements of Section 255 of the Act on October 7, 2010, which remain subject to Section 255 of the Act, as amended, and subject to the rules in parts 6 and 7 of this chapter, as amended.

§ 14.3 Exemption for Customized Equipment or Services.

- (a) The rules in this part shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- (b) A provider of advanced communications services or manufacturer of equipment used for advanced communications services may claim the exemption in paragraph (a) as a defense in an enforcement proceeding pursuant to subpart D of this part, but is not otherwise required to seek such an affirmative determination from the Commission.

§ 14.4 Exemption for Small Entities.

(a) A provider of advanced communications services or a manufacturer of equipment used for advanced communications services to which this part applies is exempt from the obligations of this part if such provider or manufacturer, at the start of the design of a product or service:

- (1) qualifies as a business concern under section 13 C.F.R. §121.105; and
- (2) together with its affiliates, as determined by 13 C.F.R. §121.103, meets the relevant small business size standard established in 13 C.F.R. §121.201 for the primary industry in which it is engaged as determined by 13 C.F.R. §121.107.

(b) A provider or manufacturer may claim this exemption as a defense in an enforcement proceeding pursuant to subpart D of this part, but is not otherwise required to seek such an affirmative determination from the Commission.

(c) This exemption will expire no later than October 8, 2013.

§ 14.5 Waivers – Multipurpose Services and Equipment.

(a) Waiver.

(1) On its own motion or in response to a petition by a provider of advanced communications services, a manufacturer of equipment used for advanced communications services, or by any interested party, the Commission may waive the requirements of this part for any feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment, for any provider of advanced communications services, or for any class of such services, that –

- (i) is capable of accessing an advanced communications service and;
- (ii) is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.

(2) For any waiver petition under this section, the Commission will examine on a case-by-case basis –

- (i) whether the equipment or service is designed to be used for advanced communications purposes by the general public; and
- (ii) whether and how the advanced communications functions or features are advertised, announced, or marketed.

(b) Class Waiver. For any petition for a waiver of more than one advanced communications service or one piece of equipment used for advanced communications services where the service or equipment share common defining characteristics, in addition to the requirements of section 14.5(a)(1) and (2), the Commission will examine the similarity of the service or equipment subject to the petition and the similarity of the advanced communications features or functions of such services or equipment.

(c) Duration.

(1) A petition for a waiver of an individual advanced communications service or equipment used for advanced communications services may be granted for the life of the service or equipment as supported by evidence on the record, or for such time as the Commission determines based on evidence on the record.

(2) A petition for a class waiver may be granted for a time to be determined by the Commission based on evidence on the record, including the lifecycle of the equipment or service in the class. Any class waiver granted under this section will waive the obligations of this part for all advanced communications services and equipment used for advanced communications services subject to a class waiver and made available to the public prior to the expiration of such waiver.

(d) Public Notice. All petitions for waiver filed pursuant to this section shall be put on public notice, with a minimum of a 30-day period for comments and oppositions.

Subpart B – Definitions

§ 14.10 Definitions.

(a) The term *accessible* shall have the meaning provided in § 14.21(b).

(b) The term *achievable* shall mean with reasonable effort or expense, as determined by the Commission. In making such a determination, the Commission shall consider:

(i) The nature and cost of the steps needed to meet the requirements of Section 716 of the Act and this part with respect to the specific equipment or service in question;

(ii) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(iii) The type of operations of the manufacturer or provider; and

(iv) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

(c) The term *advanced communications services* shall mean:

(1) Interconnected VoIP service, as that term is defined in this section;

(2) Non-interconnected VoIP service, as that term is defined in this section;

(3) Electronic messaging service, as that term is defined in this section; and

(4) Interoperable video conferencing service, as that term is defined in this section.

(d) The term *application* shall mean software designed to perform or to help the user perform a specific task or specific tasks, such as communicating by voice, electronic text messaging, or video conferencing.

(e) The term *compatible* shall have the meaning provided in § 14.21(d).

(f) The term *customer premises equipment* shall mean equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

- (g) The term *customized equipment or services* shall mean equipment and services that are produced or provided to meet unique specifications requested by a business or enterprise customer and not otherwise available to the general public, including public safety networks and devices.
- (h) The term *disability* shall mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.
- (i) The term *electronic messaging service* means a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.
- (j) The term *end user equipment* shall mean equipment designed for consumer use. Such equipment may include both hardware and software components.
- (k) The term *hardware* shall mean a tangible communications device, equipment, or physical component of communications technology, including peripheral devices, such as a smart phone, a laptop computer, a desktop computer, a screen, a keyboard, a speaker, or an amplifier.
- (l) The term *interconnected VoIP service* shall have the same meaning as in § 9.3 of this chapter, as such section may be amended from time to time.
- (m) An *interoperable video conferencing service* means a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.
- (n) The term *manufacturer* shall mean an entity that makes or produces a product, including equipment used for advanced communications services, including end user equipment, network equipment, and software.
- (o) The term *network equipment* shall mean equipment facilitating the use of a network, including, routers, network interface cards, networking cables, modems, and other related hardware. Such equipment may include both hardware and software components.
- (p) The term *nominal cost* in regard to accessibility and usability solutions shall mean small enough so as to generally not be a factor in the consumer's decision to acquire a product or service that the consumer otherwise desires.
- (q) A *non-interconnected VoIP service* is a service that:
- (a) Enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and
 - (b) Requires Internet protocol compatible customer premises equipment; and
 - (c) Does not include any service that is an interconnected VoIP service.
- (r) The term *peripheral devices* shall mean devices employed in connection with equipment, including software, covered by this part to translate, enhance, or otherwise transform advanced communications services into a form accessible to individuals with disabilities.
- (s) The term *service provider* shall mean a provider of advanced communications services that are offered in or affecting interstate commerce, including a provider of applications and services that can be used for advanced communications services and that can be accessed (*i.e.*, downloaded or run) by users over any service provider network.

(t) The term *software* shall mean programs, procedures, rules, and related data and documentation that direct the use and operation of a computer or related device and instruct it to perform a given task or function.

(u) The term *specialized customer premises equipment* shall mean customer premise equipment which is commonly used by individuals with disabilities to achieve access.

(v) The term *usable* shall have the meaning provided in § 14.21(c) of this part.

Subpart C – Implementation Requirements – What must Covered Entities Do?

§ 14.20 Obligations.

(a) General Obligations.

(1) With respect to equipment manufactured after the effective date of this part, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, must ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

(2) With respect to services provided after the effective date of this part, a provider of advanced communications services must ensure that services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

(3) If accessibility is not achievable either by building it in or by using third party accessibility solutions available to the consumer at nominal cost and that individuals with disabilities can access, then a manufacturer or service provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment, unless the requirements of this subsection are not achievable.

(4) Providers of advanced communications services shall not install network features, functions, or capabilities that impede accessibility or usability.

(5) Providers of advanced communications services, manufacturers of equipment used with these services, and providers of networks used with these services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks.

(b) Product design, development, and evaluation.

(1) Manufacturers and service providers must consider performance objectives set forth in section 14.21 at the design stage as early as possible and must implement such performance objectives, to the extent that they are achievable.

(2) Manufacturers and service providers must identify barriers to accessibility and usability as part of such evaluation.

(c) Information Pass Through.

Equipment used for advanced communications services, including end user equipment, network equipment, and software must pass through cross-manufacturer, nonproprietary, industry-standard codes, translation protocols, formats or other information necessary to provide advanced communications services in an accessible format, if achievable. Signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

(d) Information, documentation, and training.

Manufacturers and service providers must ensure that the information and documentation that they provide to customers is accessible, if achievable. Such information and documentation includes, but is not limited to, user guides, bills, installation guides for end user devices, and product support communications. The requirement to ensure the information is accessible also includes ensuring that individuals with disabilities can access, at no extra cost, call centers and customer support regarding both the product generally and the accessibility features of the product.

§ 14.21 Performance Objectives.

(a) Generally – Manufacturers and service providers shall ensure that equipment and services covered by this part are accessible, usable, and compatible as those terms are defined in paragraphs (b) through (d) of this section.

(b) Accessible – The term accessible shall mean that:

(1) Input, control, and mechanical functions shall be locatable, identifiable, and operable in accordance with each of the following, assessed independently:

(i) Operable without vision. Provide at least one mode that does not require user vision.

(ii) Operable with low vision and limited or no hearing. Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output.

(iii) Operable with little or no color perception. Provide at least one mode that does not require user color perception.

(iv) Operable without hearing. Provide at least one mode that does not require user auditory perception.

(v) Operable with limited manual dexterity. Provide at least one mode that does not require user fine motor control or simultaneous actions.

(vi) Operable with limited reach and strength. Provide at least one mode that is operable with user limited reach and strength.

(vii) Operable with a Prosthetic Device. Controls shall be operable without requiring body contact or close body proximity.

- (viii) Operable without time-dependent controls. Provide at least one mode that does not require a response time or allows response time to be by-passed or adjusted by the user over a wide range.
- (ix) Operable without speech. Provide at least one mode that does not require user speech.
- (x) Operable with limited cognitive skills. Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.
- (2) All information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues, [shall] comply with each of the following, assessed independently:
- (i) Availability of visual information. Provide visual information through at least one mode in auditory form.
- (ii) Availability of visual information for low vision users. Provide visual information through at least one mode to users with visual acuity between 20/70 and 20/200 without relying on audio.
- (iii) Access to moving text. Provide moving text in at least one static presentation mode at the option of the user.
- (iv) Availability of auditory information. Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form.
- (v) Availability of auditory information for people who are hard of hearing. Provide audio or acoustic information, including any auditory feedback tones that are important for the use of the product, through at least one mode in enhanced auditory fashion (i.e., increased amplification, increased signal-to-noise ratio, or combination).
- (vi) Prevention of visually-induced seizures. Visual displays and indicators shall minimize visual flicker that might induce seizures in people with photosensitive epilepsy.
- (vii) Availability of audio cutoff. Where a product delivers audio output through an external speaker, provide an industry standard connector for headphones or personal listening devices (e.g., phone-like handset or earcup) which cuts off the speaker(s) when used.
- (viii) Non-interference with hearing technologies. Reduce interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) to the lowest possible level that allows a user to utilize the product.
- (ix) Hearing aid coupling. Where a product delivers output by an audio transducer which is normally held up to the ear, provide a means for effective wireless coupling to hearing aids.
- (c) Usable: The term usable shall mean that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation and technical support functionally equivalent to that provided to individuals without disabilities.

(d) **Compatible:** The term *compatible* shall mean compatible with peripheral devices and specialized customer premises equipment, and in compliance with the following provisions, as applicable:

(1) External electronic access to all information and control mechanisms. Information needed for the operation of products (including output, alerts, icons, on-line help, and documentation) shall be available in a standard electronic text format on a cross-industry standard port and all input to and control of a product shall allow for real time operation by electronic text input into a cross-industry standard external port and in cross-industry standard format. The cross-industry standard port shall not require manipulation of a connector by the user.

(2) Connection point for external audio processing devices. Products providing auditory output shall provide the auditory signal at a standard signal level through an industry standard connector.

(3) TTY connectability. Products that provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. It shall also be possible for the user to easily turn any microphone on and off to allow the user to intermix speech with TTY use.

(4) TTY signal compatibility. Products, including those providing voice communication functionality, shall support use of all cross-manufacturer non-proprietary standard signals used by TTYs.

Subpart D – Recordkeeping, Consumer Dispute Assistance, and Enforcement

§ 14.30 Generally.

(a) The rules in this subpart regarding recordkeeping and enforcement are applicable to all manufacturers and service providers that are subject to the requirements of Sections 255, 716, and 718 of the Act and parts 6, 7 and this part of the rules.

(b) The requirements set forth in § 14.31 of this subpart shall be effective **[INSERT DATE 30 DAYS PLUS 1 YEAR AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

(c) The requirements set forth in §§ 14.32 through 14.37 of this subpart shall be effective on October 8, 2013.

§ 14.31 Recordkeeping.

(a) Each manufacturer and service provider subject to Section 255, 716, or 718 of the Act, must create and maintain, in the ordinary course of business and for a two year period from the date a product ceases to be manufactured or a service ceases to be offered, records of the efforts taken by such manufacturer or provider to implement Sections 255, 716, and 718 with regard to this product or service, as applicable, including:

(1) information about the manufacturer's or service provider's efforts to consult with individuals with disabilities;

(2) descriptions of the accessibility features of its products and services; and

(3) information about the compatibility of its products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.

(b) An officer of each manufacturer and service provider subject to Section 255, 716, or 718 of the Act, must sign and file an annual compliance certificate with the Commission.

(1) The certificate must state that the manufacturer or service provider, as applicable, has established operating procedures that are adequate to ensure compliance with the recordkeeping rules in this subpart and that records are being kept in accordance with this section and be supported with an affidavit or declaration under penalty of perjury, signed and dated by the authorized officer of the company with personal knowledge of the representations provided in the company's certification, verifying the truth and accuracy of the information therein.

(2) The certificate shall identify the name and contact details of the person or persons within the company that are authorized to resolve complaints alleging violations of our accessibility rules and Sections 255, 716, and 718 of the Act, and the agent designated for service pursuant to § 14.35(b) of this subpart and provide contact information for this agent. Contact information shall include, for the manufacturer or the service provider, a name or department designation, business address, telephone number, and, if available TTY number, facsimile number, and e-mail address.

(3) The annual certification must be filed with the Commission on April 1, 2013 and annually thereafter for records pertaining to the previous calendar year. The certificate must be updated when necessary to keep the contact information current.

(c) Upon the service of a complaint, formal or informal, on a manufacturer or service provider under this subpart, a manufacturer or service provider must produce to the Commission, upon request, records covered by this section and may assert a statutory request for confidentiality for these records under 47 U.S.C. § 618(a)(5)(C) and § 0.457(c) of this chapter. All other information submitted to the Commission pursuant to this subpart or pursuant to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with § 0.459 of this chapter.

§ 14.32 Consumer Dispute Assistance.

(a) A consumer or any other party may transmit a Request for Dispute Assistance to the Consumer and Governmental Affairs Bureau by any reasonable means, including by the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or e-mail to dro@fcc.gov. Any Requests filed using a method other than the Commission's online system should include a cover letter that references Section 255, 716, or 718 or the rules of parts 6, 7, or this part and should be addressed to the Consumer and Governmental Affairs Bureau. Any party with a question about information that should be included in a Request for Dispute Assistance should e-mail the Commission's Disability Rights Office at dro@fcc.gov or call 202-418-2517 (voice), 202-418-2922 (TTY).

(b) A Request for Dispute Assistance shall include:

- (1) The name, address, e-mail address, and telephone number of the party making the Request (Requester);
- (2) The name of the manufacturer or service provider that the requester believes is in violation of Section 255, 716, or 718 or the rules in this part, and the name, address, and telephone number of the manufacturer or service provider, if known;

- (3) An explanation of why the requester believes the manufacturer or service provider is in violation of Section 255, 716, or 718 or the rules in this part, including details regarding the service or equipment and the relief requested, and all documentation that supports the requester's contention;
 - (4) The date or dates on which the requester either purchased, acquired, or used (or attempted to purchase, acquire, or use) the equipment or service in question;
 - (5) The Requester's preferred format or method of response to its Request for Dispute Assistance by CGB or the manufacturer or service provider (e.g., letter, facsimile transmission, telephone (voice/TRS/TTY), e-mail, audio-cassette recording, Braille, or some other method that will best accommodate the Requester's disability, if any);
 - (6) Any other information that may be helpful to CGB and the manufacturer or service provider to understand the nature of the dispute;
 - (7) Description of any contacts with the manufacturer or service provider to resolve the dispute, including, but not limited to, dates or approximate dates, any offers to settle, etc.; and
 - (8) What the Requester is seeking to resolve the dispute.
- (c) CGB shall forward the Request for Dispute Assistance to the manufacturer or service provider named in the Request. CGB shall serve the manufacturer or service provider using the contact details of the certification to be filed pursuant to 14.31(b). Service using contact details provided pursuant to 14.31(b) is deemed served. Failure by a manufacturer or service provider to file or keep the contact information current will not be a defense of lack of service.
- (d) CGB will assist the Requester and the manufacturer or service provider in reaching a settlement of the dispute.
- (e) Thirty days after the Request for Dispute Assistance was filed, if a settlement has not been reached between the Requester and the manufacturer or service provider, the Requester may file an informal complaint with the Commission,;
- (f) When a Requester files an informal complaint with the Enforcement Bureau, as provided in § 14.34, the Commission will deem the CGB dispute assistance process closed and the requester and manufacturer or service provider shall be barred from further use of the Commission's dispute assistance process so long as a complaint is pending.

§ 14.33 Informal or formal complaints.

Complaints against manufacturers or service providers, as defined under this subpart, for alleged violations of this subpart may be either informal or formal.

§ 14.34 Informal complaints; form, filing, content, and consumer assistance.

- (a) An informal complaint alleging a violation of Section 255, 716 or 718 of the Act or parts 6, 7, or this part may be transmitted to the Enforcement Bureau by any reasonable means, including the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or e-mail. Any Requests filed using a method other than the Commission's online system should include a cover letter that references Section 255, 716, or 718 or the rules of parts 6, 7, or this part and should be addressed to the Enforcement Bureau.
- (b) An informal complaint shall include:

- (1) The name, address, e-mail address, and telephone number of the complainant;
- (2) The name, address, and telephone number of the manufacturer or service provider defendant against whom the complaint is made;
- (3) The date or dates on which the complainant or person(s) on whose behalf the complaint is being filed either purchased, acquired, or used or attempted to purchase, acquire, or use the equipment or service about which the complaint is being made;
- (4) A complete statement of fact explaining why the complainant contends that the defendant manufacturer or provider is in violation of Section 255, 716 or 718 of the Act or the Commission's rules, including details regarding the service or equipment and the relief requested, and all documentation that supports the complainant's contention;
- (5) A certification that the complainant submitted to the Commission a Request for Dispute Assistance, pursuant to § 14.32, no less than 30 days before the complaint is filed;
- (6) The complainant's preferred format or method of response to the complaint by the Commission and defendant (*e.g.*, letter, facsimile transmissions, telephone (voice/TRS/TTY), e-mail, audio-cassette recording, Braille, or some other method that will best accommodate the complainant's disability, if any); and
- (7) Any other information that is required by the Commission's accessibility complaint form.

(c) Any party with a question about information that should be included in an Informal Complaint should e-mail the Commission's Disability Rights Office at dro@fcc.gov or call 202-418-2517 (voice), 202-418-2922 (TTY).

§ 14.35 Procedure; designation of agents for service.

- (a) The Commission shall forward any informal complaint meeting the requirements of § 14.34 of this subpart to each manufacturer and service provider named in or determined by the staff to be implicated by the complaint.
- (b) To ensure prompt and effective service of informal and formal complaints filed under this subpart, every manufacturer and service provider subject to the requirements of Section 255, 716, or 718 of the Act and parts 6, 7, or this part, shall designate an agent, and may designate additional agents if it so chooses, upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. The agent shall be designated in the manufacturer or service provider's annual certification pursuant to § 14.31.

§ 14.36 Answers and replies to informal complaints.

(a) After a complainant makes a *prima facie* case by asserting that a product or service is not accessible, the manufacturer or service provider to whom the informal complaint is directed bears the burden of proving that the product or service is accessible or, if not accessible, that accessibility is not achievable under this part or readily achievable under parts 6 and 7. To carry its burden of proof, a manufacturer or service provider must produce documents demonstrating its due diligence in exploring accessibility and achievability, as required by parts 6, 7, or this part, throughout the design, development, testing, and deployment stages of a product or service. Conclusory and unsupported claims are insufficient to carry this burden of proof.

(b) Any manufacturer or service provider to whom an informal complaint is served by the Commission under this subpart shall file and serve an answer responsive to the complaint and any inquires set forth by the Commission.

- (1) The answer shall:
 - (i) Be filed with the Commission within twenty days of service of the complaint, unless the Commission or its staff specifies another time period;
 - (ii) Respond specifically to each material allegation in the complaint and assert any defenses that the manufacturer or service provider claim;
 - (iii) Include a declaration by an officer of the manufacturer or service provider attesting to the truth of the facts asserted in the answer;
 - (iv) Set forth any remedial actions already taken or proposed alternative relief without any prejudice to any denials or defenses raised;
 - (v) Provide any other information or materials specified by the Commission as relevant to its consideration of the complaint; and
 - (vi) Be prepared or formatted, including in electronic readable format compatible with the Commission's Summation or other software in the manner requested by the Commission and the complainant, unless otherwise permitted by the Commission for good cause shown.
- (2) If the manufacturer's or service provider's answer includes the defense that it was not achievable for the manufacturer or service provider to make its product or service accessible, the manufacturer or service provider shall carry the burden of proof on the defense and the answer shall:
 - (i) Set forth the steps taken by the manufacturer or service provider to make the product or service accessible and usable;
 - (ii) Set forth the procedures and processes used by the manufacturer or service provider to evaluate whether it was achievable to make the product or service accessible and usable in cases where the manufacturer or service provider alleges it was not achievable to do so;
 - (iii) Set forth the manufacturer's basis for determining that it was not achievable to make the product or service accessible and usable in cases where the manufacturer or service provider so alleges; and
 - (iv) Provide all documents supporting the manufacturer's or service provider's conclusion that it was not achievable to make the product or service accessible and usable in cases where the manufacturer or service provider so alleges.

(c) Any manufacturer or service provider to whom an informal complaint is served by the Commission under this subpart shall serve the complainant and the Commission with a non-confidential summary of the answer filed with the Commission within twenty days of service of the complaint. The non-confidential summary must contain the essential elements of the answer, including, but not limited to, any asserted defenses to the complaint, must address the material elements of its answer, and include sufficient information to allow the complainant to file a reply, if the complainant chooses to do so.

(d) The complainant may file and serve a reply. The reply shall:

- (1) Be served on the Commission and the manufacturer or service provider that is subject of the complaint within ten days after service of answer, unless otherwise directed by the Commission;
- (2) Be responsive to matters contained in the answer and shall not contain new matters.

§ 14.37 Review and disposition of informal complaints.

- (a) The Commission will investigate the allegations in any informal complaint filed that satisfies the requirements of section 14.34(b) of this subpart, and, within 180 days after the date on which such complaint was filed with the Commission, issue an order finding whether the manufacturer or service provider that is the subject of the complaint violated Section 255, 716, or 718 of the Act, or the Commission's implementing rules, and provide a basis therefore, unless such complaint is resolved before that time.
- (b) If the Commission determines in an order issued pursuant to paragraph (a) that the manufacturer or service provider violated Section 255, 716, or 718 of the Act, or the Commission's implementing rules, the Commission may, in such order, or in a subsequent order:
 - (1) Direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance with the requirements of Section 255, 716, or 718 of the Act, and the Commission's rules, within a reasonable period of time; and
 - (2) Take such other enforcement action as the Commission is authorized and as it deems appropriate.
- (c) Any manufacturer or service provider that is the subject of an order issued pursuant to paragraph (b)(1) shall have a reasonable opportunity, as established by the Commission, to comment on the Commission's proposed remedial action before the Commission issues a final order with respect to that action.

§ 14.38 Formal Complaints; General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments. Commission proceedings may also require or permit other written submissions such as briefs, written interrogatories, and other supplementary documents or pleadings.

- (a) Pleadings must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, including damages, should be pleaded fully and with specificity.
- (b) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation, or a defense to such alleged violation.
- (c) Facts must be supported by relevant documentation or affidavit.
- (d) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority.
- (e) Opposing authorities must be distinguished.
- (f) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(g) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(h) All statements purporting to summarize or explain Commission orders or policies must cite, in standard legal form, the Commission ruling upon which such statements are based.

(i) Pleadings shall identify the name, address, telephone number, and facsimile transmission number for either the filing party's attorney or, where a party is not represented by an attorney, the filing party.

§ 14.39 Format and content of formal complaints.

(a) Subject to paragraph (d) of this section governing supplemental complaints filed pursuant to § 14.39 of this subpart, a formal complaint shall contain:

(1) The name of each complainant and defendant;

(2) The occupation, address and telephone number of each complainant and, to the extent known, each defendant;

(3) The name, address, and telephone number of complainant's attorney, if represented by counsel;

(4) Citation to the section of the Communications Act and/or order and/or regulation of the Commission alleged to have been violated.

(5) A complete statement of facts which, if proven true, would constitute such a violation. All material facts must be supported, pursuant to the requirements of § 14.38(c) of this subpart and paragraph (a)(11) of this section, by relevant affidavits and documentation, including copies of relevant written agreements, offers, counter-offers, denials, or other related correspondence. The statement of facts shall include a detailed explanation of the manner and time period in which a defendant has allegedly violated the Act, Commission order, or Commission rule in question, including a full identification or description of the communications, transmissions, services, or other carrier conduct complained of and the nature of any injury allegedly sustained by the complainant. Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the plaintiff's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

(6) Proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the complaint;

(7) The relief sought, including recovery of damages and the amount of damages claimed, if known;

(8) Certification that the complainant has, in good faith, discussed or attempted to discuss the possibility of settlement with each defendant prior to the filing of the formal complaint. Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter outlining the allegations that form the basis of the complaint it anticipated filing with the Commission to the defendant carrier or one of the defendant's registered agents for service of process that invited a response within a reasonable period of time and a brief summary of all additional steps taken to resolve the dispute prior to the filing of the formal complaint. If no additional steps were taken, such certificate shall state the reason(s) why the complainant believed

such steps would be fruitless;

(9) Whether a separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or same set of facts, in whole or in part, or whether the complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission;

(10) An information designation containing:

(i) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such individual's knowledge;

(ii) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control, that are relevant to the facts alleged with particularity in the complaint. Such description shall include for each document:

(A) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(B) The author, preparer, or other source;

(C) The recipient(s) or intended recipient(s);

(D) Its physical location; and

(E) A description of its relevance to the matters contained in the complaint; and

(iii) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(11) Copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the complaint;

(12) A completed Formal Complaint Intake Form;

(13) A declaration, under penalty of perjury, by the complainant or complainant's counsel describing the amount, method, and the complainant's 10-digit FCC Registration Number, if any;

(14) A certificate of service; and

(15) A FCC Registration Number is required under part 1, subpart W. Submission of a complaint without the FCC Registration Number as required by part 1, subpart W will result in dismissal of the complaint.

(b) The following format may be used in cases to which it is applicable, with such modifications as the circumstances may render necessary:

Before the Federal Communications Commission, Washington, DC 20554

In the matter of

Complainant,

v.

Defendant.

File No. (To be inserted by the Enforcement Bureau)

Complaint

To: The Commission.

The complainant (here insert full name of each complainant and, if a corporation, the corporate title of such complainant) shows that:

1. (Here state post office address, and telephone number of each complainant).
2. (Here insert the name, and, to the extent known, address and telephone number of defendants).
3. (Here insert fully and clearly the specific act or thing complained of, together with such facts as are necessary to give a full understanding of the matter, including relevant legal and documentary support).

Wherefore, complainant asks (here state specifically the relief desired).

(Date)

(Name of each complainant)

(Name, address, and telephone number of attorney, if any)

(c) The complainant may petition the staff, pursuant to § 1.3, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

(d) Supplemental complaints.

(1) Supplemental complaints filed pursuant to § 14.39 shall conform to the requirements set out in this section and § 14.38 of this subpart, except that the requirements in §§ 14.38(b), 14.39 (a)(4), (a)(5), (a)(8), (a)(9), (a)(12), and (a)(13) of this subpart shall not apply to such supplemental complaints;

(2) In addition, supplemental complaints filed pursuant to § 14.39 of this subpart shall contain a complete statement of facts which, if proven true, would support complainant's calculation of damages for each category of damages for which recovery is sought. All material facts must be supported, pursuant to the requirements of § 14.38(c) of this subpart and paragraph (a)(11) of this section, by relevant affidavits and other documentation. The statement of facts shall include a detailed explanation of the matters relied upon, including a full identification or description of the communications, transmissions, services, or other matters relevant to the calculation of damages and the nature of any injury allegedly sustained by the complainant. Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining

the basis for the complainant's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

(3) Supplemental complaints filed pursuant to § 14.39 of this subpart shall contain a certification that the complainant has, in good faith, discussed or attempted to discuss the possibility of settlement with respect to damages for which recovery is sought with each defendant prior to the filing of the supplemental complaint. Such certification shall include a statement that, no later than 30 days after the release of the liability order, the complainant mailed a certified letter to the primary individual who represented the defendant carrier during the initial complaint proceeding outlining the allegations that form the basis of the supplemental complaint it anticipates filing with the Commission and inviting a response from the carrier within a reasonable period of time. The certification shall also contain a brief summary of all additional steps taken to resolve the dispute prior to the filing of the supplemental complaint. If no additional steps were taken, such certification shall state the reason(s) why the complainant believed such steps would be fruitless.

§ 14.40 Damages.

(a) A complaint against a common carrier may seek damages. If a complainant wishes to recover damages, the complaint must contain a clear and unequivocal request for damages.

(b) If a complainant wishes a determination of damages to be made in the same proceeding as the determinations of liability and prospective relief, the complaint must contain the allegations and information required by paragraph (h) of this section.

(c) Notwithstanding paragraph (b) of this section, in any proceeding to which no statutory deadline applies, if the Commission decides that a determination of damages would best be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the Commission may at any time order that the initial proceeding will determine only liability and prospective relief, and that a separate, subsequent proceeding initiated in accordance with paragraph (e) of this section will determine damages.

(d) If a complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the complainant must:

(1) Comply with paragraph (a) of this section, and

(2) State clearly and unequivocally that the complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief will be made.

(e) If a complainant proceeds pursuant to paragraph (d) of this section, or if the Commission invokes its authority under paragraph (c) of this section, the complainant may initiate a separate proceeding to obtain a determination of damages by filing a supplemental complaint that complies with § 14.39(d) of this subpart and paragraph (h) of this section within sixty days after public notice (as defined in § 1.4(b) of this chapter) of a decision that contains a finding of liability on the merits of the original complaint.

(f) If a complainant files a supplemental complaint for damages in accordance with paragraph (e) of this section, the supplemental complaint shall be deemed, for statutory limitations purposes, to relate back to the date of the original complaint.

(g) Where a complainant chooses to seek the recovery of damages upon a supplemental complaint in accordance with the requirements of paragraph (e) of this section, the Commission will resolve the separate, preceding liability complaint within any applicable complaint resolution deadlines contained in the Act.

(h) In all cases in which recovery of damages is sought, it shall be the responsibility of the complainant to include, within either the complaint or supplemental complaint for damages filed in accordance with paragraph (e) of this section, either:

(1) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(2) An explanation of:

(i) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(ii) Why such information is unavailable to the complaining party;

(iii) The factual basis the complainant has for believing that such evidence of damages exists;

(iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

(i) Where a complainant files a supplemental complaint for damages in accordance with paragraph (e) of this section, the following procedures may apply:

(1) Issues concerning the amount, if any, of damages may be either designated by the Enforcement Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge. Such Administrative Law Judge shall be chosen in the following manner:

(i) By agreement of the parties and the Chief Administrative Law Judge; or

(ii) In the absence of such agreement, the Chief Administrative Law Judge shall designate the Administrative Law Judge.

(2) The Commission may, in its discretion, order the defendant either to post a bond for, or deposit into an interest bearing escrow account, a sum equal to the amount of damages which the Commission finds, upon preliminary investigation, is likely to be ordered after the issue of damages is fully litigated, or some lesser sum which may be appropriate, provided the Commission finds that the grant of this relief is favored on balance upon consideration of the following factors:

(i) The complainant's potential irreparable injury in the absence of such deposit;

(ii) The extent to which damages can be accurately calculated;

(iii) The balance of the hardships between the complainant and the defendant; and

(iv) Whether public interest considerations favor the posting of the bond or ordering of the deposit.

(3) The Commission may, in its discretion, suspend ongoing damages proceedings for fourteen days,

to provide the parties with a time within which to pursue settlement negotiations and/or alternative dispute resolution procedures.

(4) The Commission may, in its discretion, end adjudication of damages with a determination of the sufficiency of a damages computation method or formula. No such method or formula shall contain a provision to offset any claim of the defendant against the complainant. The parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated method or formula. Within thirty days of the release date of the damages order, parties shall submit jointly to the Commission either:

(i) A statement detailing the parties' agreement as to the amount of damages;

(ii) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(iii) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(j) Except where otherwise indicated, the rules governing initial formal complaint proceedings govern supplemental formal complaint proceedings, as well.

§ 14.41 Joinder of complainants and causes of action.

(a) Two or more complainants may join in one complaint if their respective causes of action are against the same defendant and concern substantially the same facts and alleged violation of the Communications Act.

(b) Two or more grounds of complaint involving the same principle, subject, or statement of facts may be included in one complaint, but should be separately stated and numbered.

§ 14.42 Answers.

(a) Any defendant upon whom copy of a formal complaint is served shall answer such complaint in the manner prescribed under this section within twenty days of service of the formal complaint by the complainant, unless otherwise directed by the Commission.

(b) The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Every effort shall be made to narrow the issues in the answer. The defendant shall state concisely its defense to each claim asserted, admit or deny the averments on which the complainant relies, and state in detail the basis for admitting or denying such averment. General denials are prohibited. Denials based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the defendant's belief and why the defendant could not reasonably ascertain the facts from the complainant or any other source. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the defendant shall specify so much of it as is true and shall deny only the remainder. The defendant may deny the allegations of the complaint as specific denials of either designated averments or paragraphs.

(c) The answer shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the answer.

(d) Averments in a complaint or supplemental complaint filed pursuant to §§ 14.38 and 14.39 of this subpart are deemed to be admitted when not denied in the answer.

(e) Affirmative defenses to allegations contained in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (c) of this section.

(f) The answer shall include an information designation containing:

(1) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the answer, along with a description of the facts within any such individual's knowledge;

(2) A description of all documents, data compilations and tangible things in the defendant's possession, custody, or control, that are relevant to the facts alleged with particularity in the answer. Such description shall include for each document:

(i) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the defendant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.

(g) The answer shall attach copies of all affidavits, documents, data compilations and tangible things in the defendant's possession, custody, or control, upon which the defendant relies or intends to rely to support the facts alleged and legal arguments made in the answer.

(h) The answer shall contain certification that the defendant has, in good faith, discussed or attempted to discuss, the possibility of settlement with the complainant prior to the filing of the formal complaint. Such certification shall include a brief summary of all steps taken to resolve the dispute prior to the filing of the formal complaint. If no such steps were taken, such certificate shall state the reason(s) why the defendant believed such steps would be fruitless;

(i) The defendant may petition the staff, pursuant to § 1.3 of this chapter, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

§ 14.43 Cross-complaints and counterclaims.

Cross-complaints seeking any relief within the jurisdiction of the Commission against any party

(complainant or defendant) to that proceeding are expressly prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint in accordance with §§ 14.38 through 14.40 of this subpart. For purposes of this subpart, the term "cross-complaint" shall include counterclaims.

§ 14.44 Replies.

(a) Within three days after service of an answer containing affirmative defenses presented in accordance with the requirements of § 14.42(e) of this subpart, a complainant may file and serve a reply containing statements of relevant, material facts and legal arguments that shall be responsive to only those specific factual allegations and legal arguments made by the defendant in support of its affirmative defenses. Replies which contain other allegations or arguments will not be accepted or considered by the Commission.

(b) Failure to reply to an affirmative defense shall be deemed an admission of such affirmative defense and of any facts supporting such affirmative defense that are not specifically contradicted in the complaint.

(c) The reply shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the reply.

(d) The reply shall include an information designation containing:

(1) The name, address and position of each individual believed to have firsthand knowledge about the facts alleged with particularity in the reply, along with a description of the facts within any such individual's knowledge.

(2) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control that are relevant to the facts alleged with particularity in the reply. Such description shall include for each document:

(i) The date prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(e) The reply shall attach copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the reply.

(f) The complainant may petition the staff, pursuant to § 1.3 of this chapter, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

§ 14.45 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularity the grounds and authority therefor, and setting forth the relief or order sought.

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of § 14.38(c) of this subpart, except for those facts of which official notice may be taken.

(c) The moving party shall provide a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly marked as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 14.51(d) of this subpart. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(d) Oppositions to any motion shall be accompanied by a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly captioned as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 14.51(d) of this subpart. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(e) Oppositions to motions may be filed and served within five business days after the motion is filed and served and not after. Oppositions shall be limited to the specific issues and allegations contained in such motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting of the motion.

(f) No reply may be filed to an opposition to a motion.

(g) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(h) Amendments or supplements to complaints to add new claims or requests for relief are prohibited. Parties are responsible, however, for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding as required under § 14.38(g) of this subpart.

§ 14.46 Formal complaints not stating a cause of action; defective pleadings.

(a) Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act or a Commission rule or order will be dismissed. In such case, any amendment or supplement to such document will be considered a new filing which must be made within the statutory periods of limitations of actions contained in Section 415 of the Communications Act.

(b) Any other pleading filed in a formal complaint proceeding not in conformity with the requirements of the applicable rules in this part may be deemed defective. In such case the Commission may strike the pleading or request that specified defects be corrected and that proper pleadings be filed with the Commission and served on all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

§ 14.47 Discovery.

(a) A complainant may file with the Commission and serve on a defendant, concurrently with its complaint, a request for up to ten written interrogatories. A defendant may file with the Commission and serve on a complainant, during the period starting with the service of the complaint and ending with the service of its answer, a request for up to ten written interrogatories. A complainant may file with the Commission and serve on a defendant, within three calendar days of service of the defendant's answer, a request for up to five written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Requests for interrogatories filed and served pursuant to this procedure may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding, provided, however, that requests for interrogatories filed and served by a complainant after service of the defendant's answer shall be limited in scope to specific factual allegations made by the defendant in support of its affirmative defenses. This procedure may not be employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.

(b) Requests for interrogatories filed and served pursuant to paragraph (a) of this section shall contain a listing of the interrogatories requested and an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) A responding party shall file with the Commission and serve on the propounding party any opposition and objections to the requests for interrogatories as follows:

(1) By the defendant, within ten calendar days of service of the requests for interrogatories served simultaneously with the complaint and within five calendar days of the requests for interrogatories served following service of the answer;

(2) By the complainant, within five calendar days of service of the requests for interrogatories; and

(3) In no event less than three calendar days prior to the initial status conference as provided for in § 14.50(a) of this subpart.

(d) Commission staff will consider the requests for interrogatories, properly filed and served pursuant to paragraph (a) of this section, along with any objections or oppositions thereto, properly filed and served pursuant to paragraph (b) of this section, at the initial status conference, as provided for in § 14.50(a)(5) of this subpart, and at that time determine the interrogatories, if any, to which parties shall respond, and set the schedule of such response.

(e) The interrogatories ordered to be answered pursuant to paragraph (d) of this section are to be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them. The answers shall be filed with the Commission and served on the propounding party.