

documentation) tending to show that such carrier engaged in an unauthorized change of the subscriber's preferred carrier; a statement of whether the complainant has paid any disputed charges to the allegedly unauthorized carrier; and the specific relief sought.

(c) *Procedure.* The Commission will resolve slamming complaints under the definitions and procedures established in §§ 64.1100 through 64.1190 of this chapter. The Commission will issue a written (or electronic) order informing the complainant, the unauthorized carrier, and the authorized carrier of its finding, and ordering the appropriate remedy, if any, as defined by §§ 64.1160 through 64.1170 of this chapter.

(d) *Unsatisfied Informal Complaints Involving Unauthorized Changes of a Subscriber's Preferred Carrier; Formal Complaints Relating Back to the Filing Dates of Informal Complaints.* If the complainant is unsatisfied with the resolution of a complaint under this section, the complainant may file a formal complaint with the Commission in the form specified in § 1.721. Such filing will be deemed to relate back to the filing date of the informal complaint filed under this section, so long as the informal complaint complied with the requirements of paragraph (b) of this section and provided that: The formal complaint is filed within 45 days from the date an order resolving the informal complaint filed under this section is mailed or delivered electronically to the complainant; makes reference to both the informal complaint number assigned to and the initial date of filing the informal complaint filed under this section; and is based on the same cause of action as the informal complaint filed under this section. If no formal complaint is filed within the 45-day period, the complainant will be deemed to have abandoned its right to bring a formal complaint regarding the cause of action at issue.

[65 FR 47690, Aug. 3, 2000]

FORMAL COMPLAINTS

§ 1.720 General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, dis-

puted 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. Those formal complaint proceedings handled on the Enforcement Bureau's Accelerated Docket are subject to pleading and procedural rules that differ in some respects from the general rules for formal complaint proceedings.

(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) Specific reference shall be made to any tariff provision relied on in support of a claim or defense. Copies of relevant tariffs or relevant portions of tariffs that are referred to or relied upon in a complaint, answer, or other pleading shall be appended to such complaint, answer, or other pleading.

(i) 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.

(j) 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.

[53 FR 11852, Apr. 11, 1988, as amended at 58 FR 25572, Apr. 27, 1993; 63 FR 1035, Jan. 7, 1998; 63 FR 41446, Aug. 4, 1998; 64 FR 60725, Nov. 8, 1999]

§ 1.721 Format and content of complaints.

(a) Subject to paragraph (e) of this section governing supplemental complaints filed pursuant to § 1.722, and paragraph (f) of this section governing Accelerated Docket proceedings, 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 § 1.720(c) 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: