

### § 1.733

### 47 CFR Ch. I (10–1–09 Edition)

in cases in which discovery is not conducted, briefs shall be filed concurrently by both the complainant and defendant at such time as designated by the Commission staff and in accordance with the provisions of this section.

(d) In cases in which discovery is conducted, briefs shall be filed concurrently by both the complainant and defendant at such time designated by the Commission staff.

(e) Briefs containing information which is claimed by an opposing or third party to be proprietary under § 1.731 shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked “Not for Public Inspection.” An edited version removing all proprietary data shall also be filed with the Commission for inclusion in the public file. Edited versions shall be filed within five days from the date the unedited brief is submitted, and served on opposing parties.

(f) Initial briefs shall be no longer than twenty-five pages. Reply briefs shall be no longer than ten pages. Either on its own motion or upon proper motion by a party, the Commission staff may establish other page limits for briefs.

(g) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

(h) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of § 1.733(a).

[53 FR 11855, Apr. 11, 1988. Redesignated and amended at 58 FR 25573, Apr. 27, 1993; 63 FR 1039, Jan. 7, 1998]

#### § 1.733 Status conference.

(a) In any complaint proceeding, the Commission may, in its discretion, direct the attorneys and/or the parties to appear before it for a status conference. Unless otherwise ordered by the Commission, and with the exception of Accelerated Docket proceedings, governed by paragraph (i) of

this section, an initial status conference shall take place, at the time and place designated by the Commission staff, ten business days after the date the answer is due to be filed. A status conference may include discussion of:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of additional pleadings or evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of all or some of the matters in controversy by agreement of the parties;

(5) Whether discovery is necessary and, if so, the scope, type and schedule for such discovery;

(6) The schedule for the remainder of the case and the dates for any further status conferences; and

(7) Such other matters that may aid in the disposition of the complaint.

(b)(1) Subject to paragraph (i) of this section governing Accelerated Docket proceedings, parties shall meet and confer prior to the initial status conference to discuss:

(i) Settlement prospects;

(ii) Discovery;

(iii) Issues in dispute;

(iv) Schedules for pleadings;

(v) Joint statement of stipulated facts, disputed facts, and key legal issues; and

(vi) In a 47 U.S.C. 271(d)(6)(B) proceeding, whether or not the parties agree to waive the 47 U.S.C. 271(d)(6)(B) 90-day resolution deadline.

(2) Subject to paragraph (i) of this section governing Accelerated Docket proceedings, parties shall submit a joint statement of all proposals agreed to and disputes remaining as a result of such meeting to Commission staff at least two business days prior to the scheduled initial status conference.

(c) In addition to the initial status conference referenced in paragraph (a) of this section, any party may also request that a conference be held at any time after the complaint has been filed.

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(d) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a formal complaint proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials.

(e) Parties may make, upon written notice to the Commission and all attending parties at least three business days prior to the status conference, an audio recording of the Commission staff's summary of its oral rulings. Alternatively, upon agreement among all attending parties and written notice to the Commission at least three business days prior to the status conference, the parties may make an audio recording of, or use a stenographer to transcribe, the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, as well as the Commission staff's summary of its oral rulings. A complete transcript of any audio recording or stenographic transcription shall be filed with the Commission as part of the record, pursuant to the provisions of paragraph (f)(2) of this section. The parties shall make all necessary arrangements for the use of a stenographer and the cost of transcription, absent agreement to the contrary, will be shared equally by all parties that agree to make the record of the status conference.

(f) The parties in attendance, unless otherwise directed, shall either:

(1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by 5:30 pm, Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be submitted both as hard copy and on computer

disk in accordance with the requirements of §1.734(d); or

(2) Pursuant to the requirements of paragraph (e) of this section, submit to the Commission by 5:30 pm., Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:

(i) A transcript of the audio recording of the Commission staff's summary of its oral rulings;

(ii) A transcript of the audio recording of the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, and the Commission staff's summary of its oral rulings; or

(iii) A stenographic transcript of the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, and the Commission staff's summary of its oral rulings.

(g) Status conferences will be scheduled by the Commission staff at such time and place as it may designate to be conducted in person or by telephone conference call.

(h) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver by that party and will not preclude the Commission staff from conferring with those parties and/or counsel present.

(i) *Accelerated Docket Proceedings.* (1) In Accelerated Docket proceedings, the initial status conference will be held 10 days after the answer is due to be filed.

(2) Prior to the initial status conference, the parties shall confer, either in person or by telephone, about:

(i) Discovery to which they can agree;

(ii) Facts to which they can stipulate; and

(iii) Factual and legal issues in dispute.

(3) Two days before the status conference, parties shall submit to Commission staff a joint statement of:

(i) The agreements that they have reached with respect to discovery;

(ii) The facts to which they have agreed to stipulate; and

(iii) The disputed facts or legal issues of which they can agree to a joint statement.

(4) Two days before the status conference, each party also shall submit to Commission staff a separate statement which shall include, as appropriate, the party's statement of the disputed facts and legal issues presented by the complaint proceeding and any additional discovery that the party seeks. A complainant that wishes to reply to a defendant's affirmative defense shall do so in its pre-status-conference filing. To the extent that this filing contains statements replying to an affirmative defense, the complainant shall include, and/or serve with the statement, the witness information and documents required in § 1.726(g)(3)–(4). A defendant that intends to rely on expert evidence shall include its expert statement in its pre-status conference filing. (See § 1.729(i)(4)(ii).)

[53 FR 11855, Apr. 11, 1988. Redesignated and amended at 58 FR 25573, Apr. 27, 1993; 63 FR 1039, Jan. 7, 1998; 63 FR 41449, Aug. 4, 1998]

**§ 1.734 Specifications as to pleadings, briefs, and other documents; subscription.**

(a) All papers filed in any formal complaint proceeding must be drawn in conformity with the requirements of §§ 1.49 and 1.50.

(b) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified.

The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

(d) All proposed orders shall be submitted both as hard copies and on computer disk formatted to be compatible with the Commission's computer system and using the Commission's current wordprocessing software. Each disk should be submitted in "read only" mode. Each disk should be clearly labelled with the party's name, proceeding, type of pleading, and date of submission. Each disk should be accompanied by a cover letter. Parties who have submitted copies of tariffs or reports with their hard copies need not include such tariffs or reports on the disk. Upon showing of good cause, the Commission may waive the requirements of this paragraph.

[53 FR 11855, Apr. 11, 1988. Redesignated at 58 FR 25573, Apr. 27, 1993, as amended at 63 FR 1040, Jan. 7, 1998]

**§ 1.735 Copies; service; separate filings against multiple defendants.**

(a) Complaints may generally be brought against only one named carrier; such actions may not be brought against multiple defendants unless the defendant carriers are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall file an original copy of the complaint, accompanied by the correct fee, in accordance with part 1, subpart G (see § 1.1106) and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;