

## Federal Communications Commission

## § 76.9

the complaint or dispute, issue an order to show cause, or initiate a forfeiture proceeding.

NOTE 1 TO § 76.7: After issuance of an order to show cause pursuant to this section, the rules of procedure in Title 47, part 1, subpart A, §§ 1.91-1.95 of this chapter shall apply.

NOTE 2 TO § 76.7: Nothing in this section is intended to prevent the Commission from initiating show cause or forfeiture proceedings on its own motion; Provided, however, that show cause proceedings and forfeiture proceedings pursuant to § 1.80(g) of this chapter will not be initiated by such motion until the affected parties are given an opportunity to respond to the Commission's charges.

NOTE 3 TO § 76.7: Forfeiture proceedings are generally nonhearing matters conducted pursuant to the provisions of § 1.80(f) of this chapter (Notice of Apparent Liability). Petitioners who contend that the alternative hearing procedures of § 1.80(g) of this chapter should be followed in a particular case must support this contention with a specific showing of the facts and considerations relied on.

NOTE 4 TO § 76.7: To the extent a conflict is perceived between the general pleading requirements of this section, and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.

[64 FR 6569, Feb. 10, 1999, as amended at 67 FR 13234, Mar. 21, 2002]

### § 76.8 Status conference.

(a) In any proceeding subject to the part 76 rules, the Commission staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other 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 the matters in controversy by agreement of the parties;

(5) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(6) The need and schedule for filing briefs, and the date for any further conferences; and

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

(b) Any party may request that a conference be held at any time after an initiating document has been filed.

(c) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(d) The failure of any attorney or party, following advance notice with an opportunity to be present, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(e) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of matters relevant to the conduct of the proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the staff.

[64 FR 6571, Feb. 10, 1999]

### § 76.9 Confidentiality of proprietary information.

(a) Any materials filed in the course of a proceeding under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in FOIA.

(b) Submissions containing information claimed to be proprietary under this section shall be submitted to the Commission in confidence pursuant to