

(2) In Accelerated Docket proceedings, the failure to reply, in the pre-status-conference filing, 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.

(3) If a complainant replies to an affirmative defense in its §1.733(i)(4), pre-status-conference filing, it shall include in that filing the information, required by paragraph (d)(1) of this section, identifying individuals with first-hand knowledge of the facts alleged in the reply.

(4) An Accelerated Docket complainant that replies to an affirmative defense in its §1.733(i)(4), pre-status-conference filing also shall serve on the defendant, at the same time as that filing, those documents in the complainant's possession, custody or control that were not previously produced to the defendant and that are likely to bear significantly on the issues raised in the reply. Such a complainant is not required to comply with the remainder of the requirements in paragraphs (d) and (e) of this section.

[63 FR 1037, Jan. 7, 1998, as amended at 63 FR 41447, Aug. 4, 1998; 66 FR 16617, Mar. 27, 2001]

§ 1.727 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 §1.720(c), 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 §1.734(d). 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 §1.734(d). 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 §1.720(g).

[53 FR 11854, Apr. 11, 1988, as amended at 58 FR 25572, Apr. 27, 1993; 63 FR 1036, Jan. 7, 1998; 63 FR 41447, Aug. 4, 1998]

§ 1.728 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 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.

[53 FR 11854, Apr. 11, 1988]

§ 1.729 Discovery.

(a) Subject to paragraph (i) of this section governing Accelerated Docket proceedings, 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 in-

quiry 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 § 1.733(a).

(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 § 1.733(a)(5), 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.

(f) A propounding party asserting that a responding party has provided an inadequate or insufficient response