

## Federal Communications Commission

## § 1.731

any time penalty or deduction for a party who appears to be intentionally delaying either the proceeding or the presentation of another party's case. Within the limits imposed by its time allotment, a party may present evidence and argument in whatever manner or format it chooses, provided, however, that the submission of written testimony shall not be permitted.

(3) Three days before a minitrial, each party to a proceeding shall serve on all other parties a copy of all exhibits that the party intends to introduce during the minitrial and a list of all witnesses, including expert witnesses, that the party may call during the minitrial. Service of this material shall be accomplished either by hand or by facsimile transmission. Objections to any exhibits or proposed witness testimony will be heard before the beginning of the minitrial.

(4) No party will be permitted to call as a witness in a minitrial, or otherwise offer evidence from, an individual in that party's employ, unless the individual appears on the party's information designation (see §§ 1.721(a)(10)(i) or 1.724(f)(1)) with a general description of the issues on which she will offer evidence. No party will be permitted to present expert evidence unless the party has complied fully with the expert-disclosure requirements of § 1.729(i)(4). The Commission may permit exceptions to the rules in this paragraph (g)(4) for good cause shown.

(5) Two days before the beginning of the minitrial, parties shall file proposed findings of fact and conclusions of law. These submissions shall not exceed 40 pages per party. Within three days after the conclusion of the minitrial, parties may submit revised proposed findings of fact and conclusions of law to meet evidence introduced or arguments raised at the minitrial. These submissions shall not exceed 20 pages per party.

(6) The parties shall arrange for the stenographic transcription of minitrial proceedings so that transcripts are available and filed with the Commission no more than three days after the conclusion of the minitrial. Absent an agreement to the contrary, the cost of the transcript shall be shared equally between the parties to the proceeding.

(h) Applications for review of staff decisions issued on delegated authority in Accelerated Docket proceedings shall comply with the filing and service requirements in § 1.115(e)(4). In those Accelerated Docket proceedings which raise issues that may not be decided on delegated authority (see 47 U.S.C. 155(c)(1); 47 CFR 0.291(d)), the staff decision issued after the minitrial will be a recommended decision subject to adoption or modification by the Commission. Any party to the proceeding that seeks modification of the recommended decision may do so by filing comments challenging the decision within 15 days of its release by the Commission's Office of Media Relations. (Compare § 1.4(b)(2).) Opposition comments may be filed within 15 days of the comments challenging the decision; reply comments may be filed 10 days thereafter and shall be limited to issues raised in the opposition comments.

(i) If no party files comments challenging the recommended decision, the Commission will issue its decision adopting or modifying the recommended decision within 45 days of its release. If parties to the proceeding file comments to the recommended decision, the Commission will issue its decision adopting or modifying the recommended decision within 30 days of the filing of the final comments.

[63 FR 41448, Aug. 4, 1998, as amended at 64 FR 60725, Nov. 8, 1999]

### § 1.731 Confidentiality of information produced or exchanged.

(a) Any materials generated in the course of a formal complaint proceeding may be designated as proprietary by either party to the proceeding or a third 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)(1) through (9). Any party asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the

burden of demonstrating, by a preponderance of the evidence, that the materials designated as proprietary fall under the standards for nondisclosure enunciated in the FOIA.

(2) File with the Commission, using the Commission's Electronic Comment Filing System, a public version of the materials that redacts any proprietary information and clearly marks each page of the redacted public version with a header stating "Public Version." The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(3) File with the Secretary's Office an unredacted hard copy version of the materials that contains the proprietary information and clearly marks each page of the unredacted confidential version with a header stating "Confidential Version." The unredacted version must be filed on the same day as the redacted version.

(4) Serve one hard copy of the filed unredacted materials and one hard copy of the filed redacted materials on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of §§ 1.47(g) and 1.735(f)(1) through (3);

(b) Except as provided in paragraph (c) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) The Commission will entertain, subject to a proper showing under § 0.459 of this chapter, a party's request to further restrict individuals' access to proprietary information. Pursuant to § 0.459 of this chapter, the other parties will have an opportunity to respond to such requests. Requests and responses to requests may not be submitted by means of the Commission's Electronic Comment Filing System but instead must be filed under seal with the Office of the Secretary.

(d) The individuals identified above in paragraph (b)(1) through (3) shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(e) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (b)(1) through (3) and (c) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(f) Upon termination of the formal complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

[79 FR 73845, Dec. 12, 2014]