

Federal Communications Commission

§ 14.48

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 §14.50(a) of this subpart.

(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 §14.50(a)(5) of this subpart, 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 to a Commission-ordered discovery request may file a motion to compel within ten days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of §14.45 of this subpart.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that provides:

(1) Indexing by useful identifying information about the documents; and

(2) Technology that allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) The Commission may allow additional discovery, including, but not

limited to, document production, depositions and/or additional interrogatories. In its discretion, the Commission may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

§ 14.48 Confidentiality of information produced or exchanged by the parties.

(a) Any materials generated in the course of a formal complaint proceeding 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)(1) through (9). 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 shall 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 the FOIA.

(b) 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) These individuals shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such

§ 14.49

47 CFR Ch. I (10–1–15 Edition)

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.

(d) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (b) 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.

(e) Upon termination of a 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 complaint 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.

§ 14.49 Other required written submissions.

(a) The Commission may, in its discretion, or upon a party's motion showing good cause, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(b) Unless otherwise directed by the Commission, all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, or any other pleading submitted in the proceeding. Claims and defenses previously made but not reflected in the briefs will be deemed abandoned. The Commission may, in its discretion, limit the scope of any briefs to certain subjects or issues. A party shall attach to its brief copies of all documents, data compilations, tangible things, and affidavits upon which such party relies or intends to rely to support the facts alleged and legal arguments made in its brief and such brief shall contain a full explanation of

how each attachment is relevant to the issues and matters in dispute. All such attachments to a brief shall be documents, data compilations or tangible things, or affidavits made by persons, that were identified by any party in its information designations filed pursuant to §§ 14.39(a)(10)(i), (a)(10)(ii), 14.27(f)(1), (f)(2), and 14.44(d)(1), (d)(2) of this subpart. Any other supporting documentation or affidavits that are attached to a brief must be accompanied by a full explanation of the relevance of such materials and why such materials were not identified in the information designations. These briefs shall contain the proposed findings of fact and conclusions of law which the filing party is urging the Commission to adopt, with specific citation to the record, and supporting relevant authority and analysis.

(c) In cases in which discovery is not conducted, absent an order by the Commission that briefs be filed, parties may not submit briefs. If the Commission does authorize the filing of briefs 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 § 14.48 of this subpart 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