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(4) The Commission may, in its discretion, end adjudication of damages with a determination of the sufficiency of a damages computation method or formula. No such method or formula shall contain a provision to offset any claim of the defendant against the complainant. The parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated method or formula. Within thirty days of the release date of the damages order, parties shall submit jointly to the Commission either:

(i) A statement detailing the parties' agreement as to the amount of damages;

(ii) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(iii) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(j) Except where otherwise indicated, the rules governing initial formal complaint proceedings govern supplemental formal complaint proceedings, as well.

[66 FR 16616, Mar. 27, 2001]

§ 1.723 Joinder of complainants and causes of action.

(a) Two or more complainants may join in one complaint if their respective causes of action are against the same defendant and concern substantially the same facts and alleged violation of the Communications Act.

(b) Two or more grounds of complaint involving the same principle, subject, or statement of facts may be included in one complaint, but should be separately stated and numbered.

[53 FR 11853, Apr. 11, 1988]

§ 1.724 Answers.

(a) Subject to paragraph (k) of this section governing Accelerated Docket proceedings, any carrier upon which a copy of a formal complaint is served shall answer such complaint in the manner prescribed under this section within twenty days of service of the formal complaint by the complainant,

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unless otherwise directed by the Commission.

(b) The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Every effort shall be made to narrow the issues in the answer. The defendant shall state concisely its defense to each claim asserted, admit or deny the averments on which the complainant relies, and state in detail the basis for admitting or denying such averment. General denials are prohibited. Denials based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the defendant's belief and why the defendant could not reasonably ascertain the facts from the complainant or any other source. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the defendant shall specify so much of it as is true and shall deny only the remainder. The defendant may deny the allegations of the complaint as specific denials of either designated averments or paragraphs.

(c) The answer shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the answer.

(d) Averments in a complaint or supplemental complaint filed pursuant to § 1.722 are deemed to be admitted when not denied in the answer.

(e) Affirmative defenses to allegations contained in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (c) of this section.

(f) The answer shall include an information designation containing:

(1) The name, address, and position of each individual believed to have first-hand knowledge of the facts alleged with particularity in the answer, along with a description of the facts within any such individual's knowledge;

(2) A description of all documents, data compilations and tangible things

in the defendant's possession, custody, or control, that are relevant to the facts alleged with particularity in the answer. Such description shall include for each document:

(i) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the defendant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(g) The answer shall attach copies of all affidavits, documents, data compilations and tangible things in the defendant's possession, custody, or control, upon which the defendant relies or intends to rely to support the facts alleged and legal arguments made in the answer.

(h) The answer shall contain certification that the defendant has, in good faith, discussed or attempted to discuss, the possibility of settlement with the complainant prior to the filing of the formal complaint. Such certification shall include a brief summary of all steps taken to resolve the dispute prior to the filing of the formal complaint. If no such steps were taken, such certificate shall state the reason(s) why the defendant believed such steps would be fruitless;

(i) Where the complaint is filed pursuant to 47 U.S.C. 271(d)(6)(B), the defendant shall clearly indicate its willingness to waive the 90-day resolution deadline contained within 47 U.S.C. 271(d)(6)(B), in accordance with the requirements of §1.736.

(j) The defendant may petition the staff, pursuant to §1.3, for a waiver of any of the requirements of this section.

Such waiver may be granted for good cause shown.

(k) Accelerated Docket Proceedings. For the purpose of this paragraph (k), the term document also shall include data compilations and tangible things.

(1) Any party named as a defendant in an Accelerated Docket formal complaint shall answer such complaint in the manner prescribed under this section within ten days of service of the complaint by the complainant, unless otherwise directed by the Commission. Except as set forth in this paragraph (k), answers in Accelerated Docket proceedings shall comply with the requirements of this section.

(2) The requirement in §1.720(c) and paragraph (g) of this section that factual assertions be supported by affidavit shall not apply to answers in Accelerated Docket proceedings. Nevertheless, allegations of material fact, whether based on personal knowledge or information and belief, that cannot be supported by documentation remain subject to the provisions of §1.52.

(3) Answers on the Accelerated Docket are not required to include proposed findings of fact, conclusions of law, and legal analysis relevant to the defenses and arguments set forth in the answer, as required in paragraph (c) of this section. Nevertheless, answers on the Accelerated Docket shall fully set out the facts and legal theories on which the defendant premises its defenses.

(4) In light of the requirement for staff-supervised settlement negotiations required in §1.730(b), answers on the Accelerated Docket are not required to include a certification that the defendant has discussed, or attempted to discuss, the possibility of settlement with the complainant, as required in paragraph (h) of this section.

(5) As required in §1.729(i)(1), answers on the Accelerated Docket shall be accompanied, when served on complainants, by copies of documents, within the defendant's possession, custody or control, that are likely to bear significantly on the issues raised in the proceeding. Unless otherwise directed, these documents shall not be filed with the Commission. In light of this automatic document production requirement, answers on the Accelerated

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Docket are not required to include a description of all relevant documents in the defendant's possession, custody or control, as required in paragraph (f)(2) of this section.

(6) Answers on the Accelerated Docket are not required to provide the description, required in paragraph (f)(3) of this section, of the manner in which the defendant identified persons with knowledge of, and documents relevant to, the dispute.

(7) In Accelerated Docket proceedings, the defendant, as required in § 1.729(i)(1), shall serve, contemporaneously with its answer, the complainant(s) with copies of documents, within the defendant's possession, custody or control, that are likely to bear significantly on the issues raised in the complaint and/or the answer.

[53 FR 11853, Apr. 11, 1988, as amended at 58 FR 25572, Apr. 27, 1993; 63 FR 1037, Jan. 7, 1998; 63 FR 41446, Aug. 4, 1998; 66 FR 16617, Mar. 27, 2001]

§ 1.725 Cross-complaints and counterclaims.

Cross-complaints seeking any relief within the jurisdiction of the Commission against any carrier that is a party (complainant or defendant) to that proceeding are expressly prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint in accordance with §§ 1.720 through 1.736. For purposes of this subpart, the term "cross-complaint" shall include counterclaims.

[63 FR 1037, Jan. 7, 1998]

§ 1.726 Replies.

(a) Subject to paragraph (g) of this section governing Accelerated Docket proceedings, within three days after service of an answer containing affirmative defenses presented in accordance with the requirements of § 1.724(e), a complainant may file and serve a reply containing statements of relevant, material facts and legal arguments that shall be responsive to only those specific factual allegations and legal arguments made by the defendant in support of its affirmative defenses. Replies which contain other allegations or arguments will not be accepted or considered by the Commission.

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(b) Failure to reply 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.

(c) The reply shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the reply.

(d) The reply shall include an information designation containing:

(1) The name, address and position of each individual believed to have first-hand knowledge about the facts alleged with particularity in the reply, along with a description of the facts within any such individual's knowledge.

(2) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control that are relevant to the facts alleged with particularity in the reply. Such description shall include for each document:

(i) The date prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(e) The reply shall attach copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the reply.

(f) The complainant may petition the staff, pursuant to § 1.3, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.