

#### § 14.46

#### 47 CFR Ch. I (10–1–16 Edition)

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 § 14.38(c) of this subpart, 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 § 14.51(d) of this subpart. 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 § 14.51(d) of this subpart. 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 § 14.38(g) of this subpart.

#### § 14.46 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 or a Commission rule or order 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.

#### § 14.47 Discovery.

(a) 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 inquiry 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 §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 sepa-

rately 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