

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Certain of the Commission's)	
Part 1 Rules of Practice and Procedure Relating)	GC Docket No. 10-44
to the Filing of Formal Complaints Under Section)	
208 of the Communications Act and Pole)	
Attachment Complaints Under Section 224 of the)	
Communications Act)	

ORDER

Adopted: November 5, 2014

Released: November 12, 2014

By the Commission:

I. INTRODUCTION

1. At present, parties cannot file documents electronically with the Commission in certain complaint proceedings. Instead, they must file paper copies with the Secretary's Office. This process is time-consuming for the parties and makes it difficult for the public to track case developments. To modernize and streamline the process, this Order implements new filing procedures for these proceedings, allowing parties to utilize the Commission's Electronic Comment Filing System (ECFS) for their submissions. The ECFS system enables parties and the general public to locate filings by entering various search criteria. In addition, ECFS offers an RSS Feed feature, which allows users to be notified of any new filings associated with a given docket.

2. This Order requires electronic filing through ECFS in two categories of cases: (a) formal complaints under Section 208 of the Communications Act (Act);¹ and (b) pole attachment complaints under Section 224 of the Act.² Because the changes we adopt here modify existing agency procedural rules, they are exempt from the notice and comment requirements of the Administrative Procedure Act.³

II. BACKGROUND

3. In 1998, the Commission amended its rules to permit electronic filing in certain proceedings, noting that it would "evaluate the new rules and assess the operation of the system as we gain experience to determine . . . whether it is feasible to expand further the applicability of the [ECFS]

¹ 47 U.S.C. § 208 (authorizing complaints regarding "anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof").

² *Id.* § 224(b) (authorizing complaints concerning "rates, terms, and conditions" for attachments by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility"). The procedural rules for formal complaints under Section 208 differ from those for pole attachment complaints under Section 224. *Compare* 47 C.F.R. §§ 1.720–1.736 *with* 47 C.F.R. §§ 1.1401–1.1424.

³ 5 U.S.C. § 553(b) (stating that notice and comment requirements do not apply to rules of agency procedure). *See Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Notice of Proposed Rulemaking, 25 FCC Rcd 2430, 2430, para. 1 n.1; 2434, para. 11 n.15; 2436, para. 16 n.23 (2010); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1598, para. 10 n.23; 1600, para. 15 n.44 (2011) (*Part 1 Order*) (noting that notice and comment would not be required for these procedural changes).

system beyond rulemaking-related proceedings and possibly ultimately to require electronic filing.”⁴ In 2011, the Commission released a Report and Order revising Part 1 and Part 0 of its rules.⁵ One aspect of the *Part 1 Order* was a decision to modify procedural rules to enhance openness and transparency of agency proceedings.⁶ Specifically, the *Part 1 Order* required increased use of electronic docketing, electronic filing of pleadings, and electronic notification to parties about developments in proceedings.⁷ The *Part 1 Order* directed the Enforcement Bureau to implement electronic docketing and filing in “[n]ewly filed section 208 formal common carrier complaints and newly filed section 224 pole attachment complaints.”⁸

4. During the transition to a comprehensive docketing regime, the *Part 1 Order* permitted Bureaus not to assign a formal docket number to certain proceedings if, in the considered judgment of staff, it would not be in the public interest to do so.⁹ Similarly, the *Part 1 Order* stated that, during the transition to a comprehensive electronic filing regime, Bureaus could permit paper filings if doing so would be in the public interest.¹⁰ Accordingly, the Enforcement Bureau issued a Public Notice on May 31, 2011, advising that, although it would be migrating newly filed Section 208 formal complaints and newly filed Section 224 pole attachment complaints to a formal docketing system utilizing ECFS, it first had to modify certain aspects of the Commission’s rules.¹¹

5. This Order fulfills the mandates of the *Part 1 Order* by implementing procedures to facilitate docketing and electronic filing in Section 208 formal complaint proceedings and Section 224 pole attachment complaint proceedings.¹² The rule changes apply to both complaints filed after the effective date of these rules, and to new filings made in existing proceedings.¹³

III. DISCUSSION

6. Currently, parties to proceedings involving Section 208 formal complaints and Section 224 complaints must file hard-copy pleadings with the Office of the Secretary. Although members of the public may obtain copies of the pleadings from the Commission’s Reference Information Center, there is no way to search for or view pleadings online. Today’s actions modernize and reform these existing procedures.

7. Specifically, in order to facilitate electronic filing of new Section 208 formal complaints and Section 224 complaints, we have established within ECFS a “Submit a Non-Docketed Filing” module

⁴ *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322, 11322, para. 1 (1998).

⁵ See *Part 1 Order*, 26 FCC Rcd 1594.

⁶ *Id.* at 1594, para. 2.

⁷ *Id.* at 1594, paras. 1, 4.

⁸ *Id.* at 1599–1600, para. 15.

⁹ *Id.* at 1598, para. 10.

¹⁰ *Id.* at 1600, para. 15.

¹¹ *Electronic Filing of Section 208 and Section 224 Formal Complaints*, Public Notice, 26 FCC Rcd 7746 (Enf. Bur. 2011).

¹² Because complaints alleging violations of the data roaming rules are filed pursuant to the procedures in sections 1.720-1.735 of the Commission’s rules, 47 C.F.R. §§ 1.720-1.735, they are encompassed by this Order. See 47 C.F.R. § 20.12(e)(2).

¹³ All previously-filed pleadings in existing proceedings will remain in paper format and are available for viewing at the Commission’s Reference Information Center. Paragraph 11, *infra*, discusses the procedure following the effective date of these rules for filing pleadings electronically in proceedings that were instituted by a paper complaint. These rule changes do not apply to Section 208 informal complaint proceedings. See 47 C.F.R. §§ 1.716–1.718.

that facilitates filing of such applications into a single docket where all such complaints must be filed. We employ this mechanism because staff must review a complaint for conformance with the Commission's rules before the matter can receive its own unique ECFS docket number.

8. When filing a Section 208 formal complaint or Section 224 complaint, as of the effective date of this Order, the complainant will be required to select either "Section 208 Complaint: Restricted Proceedings" or "Section 224 Pole Attachment Complaint: Restricted Proceedings" from the "Submit a Non-Docketed Filing" module of ECFS.¹⁴ However, when using ECFS to initiate new proceedings under Sections 208 or 224, a complainant no longer will have to file its complaint in any manner with the Office of the Secretary.¹⁵

9. EB staff will review new Section 208 formal complaints and Section 224 complaints for conformance with procedural rules (including fee payment, as appropriate).¹⁶ As of the effective date of this Order, complainants no longer will submit a hard copy of the complaint with the fee payment as described in rule 1.1106.¹⁷ Instead, complainants must first transmit the complaint filing fee to the designated payment center and then file the complaint electronically using ECFS. Complainants may transmit the complaint filing fee via check, wire transfer, or electronically using the Commission's Fee Filer System (Fee Filer).

10. Assuming a complaint satisfies this initial procedural review, EB staff then will assign an EB file number to the complaint, give the complaint its own case-specific ECFS docket number, and enter both the EB file number and ECFS docket number into ECFS. At that time, EB staff will post a Notice of Complaint Letter in the case-specific ECFS docket and transmit the letter (and the complaint) via e-mail to the defendant. On the other hand, if a filed complaint does not comply with the Commission's procedural rules, EB staff will serve a rejection letter on the complainant and post the rejection letter and related correspondence in ECFS. Importantly, the rejection letter will not preclude the complainant from curing the procedural infirmities and refile the complaint. EB staff will not assign an EB file number or a separate ECFS docket number to a rejected complaint, but interested persons can locate the rejected complaint by searching for party names, dates, rule citation, or other relevant ECFS search criteria.

11. Upon the effective date of this Order, all pleadings, attachments, exhibits, and other documents in Section 208 formal complaint and Section 224 complaint proceedings must be filed using ECFS, both in cases where the complaint was initially filed in ECFS and in pending cases filed under the old rules.¹⁸ With respect to complaints filed prior to the effective date of this Order, EB staff will assign an individual ECFS docket number to each existing proceeding and notify existing parties by letter of this new ECFS number. This ECFS docket number will be in addition to the previously-assigned number. The first step in using ECFS is to input the individual case's ECFS docket number or EB File number. The new rules allow parties to serve post-complaint submissions on opposing parties via email without

¹⁴ The Commission may make available other capabilities of ECFS to streamline this process. All electronic filings must be machine-readable, and files containing text must be formatted to allow electronic searching and/or copying (e.g., in Microsoft Word or PDF format). Non-text filings (e.g., Microsoft Excel) must be submitted in native format. Be certain that filings submitted in .pdf or comparable format are not locked or password-protected. If those restrictions are present (e.g., a document is locked), the ECFS system may reject the filing, and a party will need to resubmit its document within the filing deadline. The Commission will consider granting waivers to this electronic filing requirement only in exceptional circumstances. *See Part 1 Order*, 26 FCC Rcd at 1602, para. 20 & n.61 (citing *Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4517, 4531-32, para. 55 (2011) (*Ex Parte Reform Order*)).

¹⁵ *See infra* Appendix (detailing revisions to 47 C.F.R. §§ 1.735(b); 1.1408(a)).

¹⁶ Complainants must remit filing fees for complaints in accordance with 47 C.F.R. § 1.1106.

¹⁷ *See* 47 C.F.R. § 1.1106.

¹⁸ *See infra* Appendix (detailing revisions to 47 C.F.R. §§ 1.735(f); 1.1408(a)).

following up by regular U.S. mail.¹⁹ However, parties must provide hard copies of submissions to staff in the Market Disputes Resolution Division (MDRD) upon request.²⁰

12. Consistent with existing Commission electronic filing guidelines,²¹ any party asserting that materials filed in a Section 208 formal complaint or Section 224 pole attachment complaint proceeding are proprietary must file with the Commission, using ECFS, a public version of the materials with any proprietary information redacted.²² The party also must file with the Secretary's Office an unredacted hard copy version that contains the proprietary information and clearly marks each page, or portion thereof, using bolded brackets, highlighting, or other distinct markings that identify the sections of the filing for which a proprietary designation is claimed.²³ Each page of the redacted and unredacted versions must be clearly identified as the "Public Version" or the "Confidential Version," respectively.²⁴ Both versions must be served on the same day.²⁵ These procedures apply regardless of whether the parties file materials in a Section 208 formal complaint or Section 224 pole attachment complaint.²⁶

13. Section 208 formal complaint and Section 224 pole attachment complaint proceedings are restricted for purposes of the *ex parte* rules.²⁷ The rule changes in this Order do not affect the restricted status of the complaint proceedings.

14. Finally, we take this opportunity to make minor editorial changes to certain of the Commission's Section 208 formal complaint and Section 224 pole attachment complaint rules to bring them more in line with the *Part 1 Order* and the electronic age. For example, the revisions provide for email service and filing and eliminate filing requirements rendered unnecessary as a result of those measures. Moreover, we take steps to make the complaint rules uniform and to correct inadvertent

¹⁹ See *infra* Appendix (detailing revisions to 47 C.F.R. §§ 1.735(f); 1.1408(a)). Parties using email service should be mindful that the Commission's or the opposing party's computer server may reject email attachments that are too large.

²⁰ See, e.g., Appendix (detailing revisions to 47 C.F.R. §§ 1.735(e)–(f); 1.1408(a)).

²¹ See 47 C.F.R. § 0.459(a)(2).

²² See *infra* Appendix (detailing revisions to 47 C.F.R. §§ 1.731(a); 1.1408(c)). The revisions modify the rules for filing requests for the confidential treatment of proprietary information so that the two sets of rules are uniform, consolidated, and consistent with the Commission's e-filing practices.

²³ See *infra* Appendix (detailing revisions to 47 C.F.R. §§ 1.731(a); 1.1408(c)). Filers must ensure that proprietary information has been properly redacted and thus is not viewable. If a filer inadvertently discloses proprietary information, the Commission will not be responsible for that disclosure. *Part 1 Order*, 26 FCC Rcd at 1600, para. 17 n.49.

²⁴ See *infra* Appendix (detailing revisions to 47 C.F.R. §§ 1.731(a); 1.1408(c)).

²⁵ See *infra* Appendix (detailing revisions to 47 C.F.R. §§ 1.731(a)(3); 1.1408(c)(3)).

²⁶ The existing filing rules for these two types of proceedings are inconsistent and/or missing necessary requirements. We accordingly revise them to be uniform.

²⁷ See 47 C.F.R. § 1.1208 (establishing the prohibition against *ex parte* presentations in restricted proceedings).

omissions and typographical errors.²⁸ Consistent with the Administrative Procedure Act, we adopt these changes without notice and comment.²⁹

15. The attached Appendix contains the amendments to the rules. The revised rules, and the requirement that these types of filings be submitted electronically, will take effect 30 days after publication in the Federal Register.

16. We believe, however, that it would serve the public interest to allow filings in these types of proceedings to be made in accordance with this order as soon as possible, without waiting until the rules become effective. Therefore, effective 10 days after release of this Order, we waive our existing rules to the extent that they might prohibit such electronic filing, subject to the availability of such capabilities in ECFS. The Commission may suspend, revoke, amend, or waive its rules at any time for good cause shown.³⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³¹ This waiver serves the public interest by allowing the benefits of electronic filing to be realized immediately by the public, by Commission staff, and by those parties who choose to use it. It will also allow for a transition period during which electronic filing, though not yet mandatory, will be permitted, which should benefit both the Enforcement Bureau and parties by helping to identify any unforeseen difficulties.

IV. PROCEDURAL MATTERS

17. *Regulatory Flexibility Act.* The actions taken in this Order do not require notice and comment,³² and therefore fall outside the Regulatory Flexibility Act of 1980, as amended.³³ We nonetheless anticipate that the rules we adopt today will not have a significant economic impact on a substantial number of small entities. As described above, the rules relate to our internal procedures and do not impose new substantive responsibilities on regulated entities. There is no reason to believe that operation of the revised rules will impose significant costs on parties to Commission proceedings. To the contrary, we take today's actions with the expectation that, overall, they will make dealings with the Commission quicker, easier, and less costly for entities of all sizes.

18. *Paperwork Reduction Act.* Although the rule sections affected by this proceeding have information collections associated with them, the Office of Management and Budget has determined that, under the Paperwork Reduction Act of 1995,³⁴ these changes are not substantive in nature and will not result in any new or modified information collections.

²⁸ See *infra* Appendix (detailing revisions to 47 C.F.R. §§ 1.720(j), 1.734(c), 1.735(d)–(f) (eliminating fax transmission as a contact requirement and as a means of service); 1.721(a)(3), 1.1404(a) (adding requirement that complainants include email address in their contact information); 1.727(c)–(d) (eliminating requirement that a moving party submit a proposed order for adoption with a motion); 1.731(a), 1.1408(c)–(i) (adding requirement for redactions as well as creating uniformity among confidential filing rules); 1.734(d) (eliminating requirement that a moving party submit a proposed order when filing a motion or opposition thereto); 1.735(b)(1)–(b)(2), 1.735(e) (modifying the service requirements for Section 208 complaints); 1.735(c) (eliminating requirement that parties file additional copies of pleadings in cases involving multiple defendants); 1.735(d) (changing to email the manner in which the Commission serves notices of complaints and scheduling information)).

²⁹ See 5 U.S.C. § 553(b); *Part 1 Order*, 26 FCC Rcd at 1598, para. 10 n.23; 1600, para. 15 n.44.

³⁰ 47 C.F.R. § 1.3.

³¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³² See *supra* nn.26, 27.

³³ See 5 U.S.C. §§ 601(2); 603(a).

³⁴ Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501 *et seq.*).

V. ORDERING CLAUSE

19. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 208, and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, 224, that the rules set forth in the attached Appendix ARE ADOPTED, effective 30 days after publication in the Federal Register.

20. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 208, and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, 224, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that, effective upon release of this Order, sections 1.720, 1.721, 1.727, 1.731, 1.732, 1.733, 1.734, 1.735, 1.1403, 1.1404, and 1.1408 of the Commission's rules, 47 C.F.R. §§ 1.720, 1.721, 1.727, 1.731, 1.732, 1.733, 1.734, 1.735, 1.1403, 1.1404, 1.1408, are WAIVED to the extent necessary to permit online electronic filing in accordance with the processes discussed in this Order. This waiver shall be effective ten days after release of this Order and until the effective date of the rule changes ordered in the previous paragraph.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX**Final Rules**

For the reasons discussed in this Order, the Federal Communications Commission amends 47 C.F.R. Part 1 of the Commission's Rules as follows:

Part 1 – PRACTICE AND PROCEDURE

1. Section 1.720 is amended by revising paragraph (j) to read as follows:

§ 1.720 General pleading requirements.

* * * * *

(j) Pleadings shall identify the name, address, telephone number, and email address for either the filing party's attorney or, where a party is not represented by an attorney, the filing party.

2. Section 1.721 is amended by revising subparagraphs (a)(3) and (a)(5) to read as follows:

§ 1.721 Format and content of complaints.

(a) * * * * *

(3) The name, address, telephone number, and email address of complainant's attorney, if represented by counsel;

* * * * *

(5) * * * Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the complainant's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

3. Section 1.727 is amended by deleting former paragraphs (c)–(d) and renumbering former paragraphs (e)–(h) as (c)–(f) so that the paragraphs of this rule section are numbered to read as follows:

§ 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) 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.

(d) No reply may be filed to an opposition to a motion.

(e) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(f) 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).

4. Section 1.731 is amended by revising paragraph (a) and placing part of the existing language into a newly created subpart (a)(1), consolidating 1.732(e) into 1.731(a), and adding new subparagraphs (a)(2)–(3) and (c) to read as follows:

§ 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)–(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)–(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, a party's request to further restrict individuals' access to proprietary information. Pursuant to § 0.459, 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)–(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)–(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.

5. Section 1.732 is amended by deleting former paragraph (e) and renumbering former paragraphs (f)–(h) as (e)–(g) to read as follows:

§ 1.732 Other Required Written Submissions

* * * * *

(e) 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 staff may establish other page limits for briefs.

(f) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

(g) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of § 1.733(a).

6. Section 1.733 is amended by revising subparagraphs (f)(1)–(2) to read as follows:

§ 1.733 Status conference.

* * * * *

(f) The parties in attendance, unless otherwise directed, shall either:

(1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by midnight, Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be filed using the Commission's Electronic Comment Filing System; or

(2) Pursuant to the requirements of paragraph (e) of this section, submit to the Commission by midnight, Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:

7. Section 1.734 is amended by deleting paragraph (d) and revising paragraph (c) to read as follows:

§ 1.734 Specifications as to pleadings, briefs, and other documents; subscription.

* * * * *

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, email address, and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party, in accordance with the requirements of § 1.52, shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

8. Section 1.735 is amended by revising the title of the rule and paragraph (b) including deleting former (b)(1)–(2), deleting former paragraph (c); renumbering former paragraphs (d)–(e) as (c)–(d); adding a new paragraph (e); and, revising paragraphs (f)–(g) to read as follows:

§ 1.735 Fee remittance; electronic filing; copies; service; separate filings against multiple defendants.

* * * * *

(b) The complainant shall remit separately the correct fee either by check, wire transfer, or electronically, in accordance with part 1, subpart G (see § 1.1106) and, shall file an original copy of the complaint, using the Commission's Electronic Comment Filing System, and, on the same day:

(1) If the complaint is filed against a carrier concerning matters within the responsibility of the International Bureau (see § 0.261 of this chapter), serve, by email, a copy on the Chief, Policy Division, International Bureau; and

(2) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with part 1, subpart G (see § 1.1106), for each additional defendant.

(c) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(d) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by email, to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by email, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by email, to all parties, a schedule detailing the date the answer and any other applicable pleading will be due and the date, time, and location of the initial status conference.

(e) Parties shall provide hard copies of all submissions to staff in the Market Disputes Resolution Division of the Enforcement Bureau upon request.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be filed using the Commission's Electronic Comment Filing System. In addition, all pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be served by the filing party 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).

Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service; or

(3) Service by email that is fully transmitted to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by email that is fully transmitted to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day.

(g) Supplemental complaint proceedings. Supplemental complaints filed pursuant to § 1.722 shall conform to the requirements set forth in this section, except that the complainant need not submit a filing fee, and the complainant may effect service pursuant to subsection (e)–(f) of this section rather than subsection (c) of this section.

9. Section 1.1403 is amended by revising paragraph (d) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * * * *

(d) A cable television system operator or telecommunications carrier may file a “Petition for Temporary Stay” of the action contained in a notice received pursuant to paragraph (c) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service or telecommunication service, a copy of the notice, and certification of service as required by § 1.1404(b). The named respondent may file an answer within 7 days of the date the Petition for Temporary Stay was filed. No further filings under this section will be considered unless requested or authorized by the Commission and no extensions of time will be granted unless justified pursuant to § 1.46.

10. Section 1.1404 is amended by revising paragraph (a) to read as follows:

§ 1.1404 Complaint.

(a) The complaint shall contain the name, address, telephone number, and email address of the complainant; name, address, telephone number, and email address of the respondent; and a verification (in accordance with the requirements of § 1.52), signed by the complainant or officer thereof if complainant is a corporation, showing complainant’s direct interest in the matter complained of. Counsel for the complainant may sign the complaint. Complainants may join together to file a joint complaint. Complaints filed by associations shall specifically identify each utility, cable television system operator, or telecommunications carrier who is a party to the complaint and shall be accompanied by a document from each identified member certifying that the complaint is being filed on its behalf.

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11. Section 1.1408 is amended by revising the title of the rule and paragraph (a) as well as adding new paragraphs (c)–(h) to read as follows:

§ 1.1408 Fee remittance; electronic filing; service; number of copies; form of pleadings; and proprietary materials.

(a) The complainant shall remit separately the correct fee either by check, wire transfer, or electronically, in accordance with part 1, subpart G (see § 1.1106) and, shall file an original copy of the complaint, using the Commission’s Electronic Comment Filing System. The original of the response and reply, as well as all other written submissions, shall be filed with the Commission using the Commission’s Electronic Comment Filing System. Service must be made in accordance with the requirements of §§ 1.735(b)–(c) and (e)–(f).

(b) All papers filed in the complaint proceeding must be drawn in conformity with the requirements of §§ 1.49, 1.50 and 1.52.

(c) Any materials generated in the course of a pole attachment 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)–(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)–(3);

(d) Except as provided in paragraph (e) 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.

(e) The Commission will entertain, subject to a proper showing under § 0.459, a party's request to further restrict access to proprietary information. Pursuant to § 0.459, 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.

(f) The individuals identified above in paragraph (d)(1)–(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.

(g) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (d) and (e) 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.

(h) Upon termination of the pole attachment 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.