

SUPPORTING STATEMENT

A. Justification:

1. The Commission is seeking an extension (no change in reporting, recordkeeping or third party disclosure requirements). However, the number of respondent/responses has decreased along with the annual burden and annual costs.

Sections 206-209 of the Communications Act of 1934, as amended (the “Act”), provide the statutory framework for the Commission’s rules for resolving formal complaints against common carriers.

Section 208(a) authorizes complaints by any person “complaining of anything done or omitted to be done by any common carrier” subject to the provisions of the Act.

Section 208(a) states that, if a carrier does not satisfy a complaint or there appears to be any reasonable ground for investigating the complaint, the Commission shall “investigate the matters complained of in such manner and by such means as it shall deem proper.”

Certain categories of complaints are subject to a statutory deadline for resolution. *See, e.g.*, 47 U.S.C. § 208(b)(1) (imposing a five-month deadline for complaints challenging the “lawfulness of a charge, classification, regulation, or practice”);

47 U.S.C. § 271(d)(6) (imposing a 90-day deadline for complaints alleging that a Bell operating company has ceased to meet conditions imposed in connection with approval to provide in-region interLATA services).

Formal complaint proceedings before the Commission are similar to civil litigation in federal district court. In fact, under section 207 of the Act, a party claiming to be damaged by a common carrier may file its complaint with the Commission or in any district court of the United States, “but such person shall not have the right to pursue both such remedies.” *See* 47 U.S.C. § 207.

The Commission has promulgated rules (the “Formal Complaint Rules”) to govern its formal complaint proceedings that are similar in many respects to the Federal Rules of Civil Procedure. *See* 47 C.F.R. §§ 1.720-1.736. These rules require the submission of information from the parties necessary to create a record on which the Commission can decide complex legal and factual issues.

As described in Section 1.720 of the Commission’s rules, formal complaint proceedings are resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments. *See* 47 C.F.R. § 1.720.

Specifically, the Commission’s Formal Complaint Rules mandate collection of the following information:

- General pleading requirements:
 - ✓ Parties are required to submit copies of all non-Commission authorities relied upon that are not routinely available in national reporting systems. 47 C.F.R. § 1.720(f).

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- ✓ Parties must submit copies of relevant tariffs or relevant portions of tariffs that are referred to or relied upon in their pleadings. 47 C.F.R. § 1.720(h).
- Complaint:
 - ✓ All material facts in the complaint must be supported by relevant affidavits and documentation, and the documentary evidence upon which the complainant relies to support its facts and arguments must be attached to the complaint. 47 C.F.R. §§ 1.721(a)(5), (11); *see also* 47 C.F.R. § 1.720(c).
 - ✓ The complaint must contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments. 47 C.F.R. § 1.721(a)(6).
 - ✓ The complaint must specify the relief sought and the amount of damages claimed, if known. 47 C.F.R. § 1.721(a)(7).
 - ✓ The complainant must certify that prior to filing the complaint, the complainant mailed to the defendant carrier (or its registered agent for service of process) a certified letter outlining the allegations that form the basis of the complaint it anticipates filing with the Commission and inviting a response within a reasonable period of time. 47 C.F.R. § 1.721(a)(8).
 - ✓ The complaint must include an information designation identifying witnesses with knowledge of facts alleged and describing all relevant documents. 47 C.F.R. § 1.721(a)(10).
 - ✓ A FCC Form 485, Formal Complaint Intake Form, must accompany the complaint. 47 C.F.R. § 1.721(a)(12). The form indicates, among other things, that the complaint satisfies the procedural and substantive requirements under the Act and the Commission's rules.
 - ✓ If a complainant wishes to recover damages, the complaint must contain a clear and unequivocal request for damages. 47 C.F.R. § 1.722(a). Either the complaint or a subsequent supplemental complaint for damages must contain either a computation of damages, along with an identification of relevant supporting evidence, or an explanation of why such evidence is not then available. 47 C.F.R. § 1.722(a), (e) and (h).
- Answer:
 - ✓ A defendant has 20 days after service of the complaint to file an answer, unless otherwise directed by the Commission. 47 C.F.R. § 1.724(a).
 - ✓ The answer must contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments. 47 C.F.R. § 1.724(c).
 - ✓ The answer must include an information designation identifying witnesses with knowledge of facts alleged and describing all relevant documents. 47 C.F.R. § 1.724(f).
 - ✓ Copies of all documents upon which the defendant relies to support the facts and arguments set forth in the answer must be attached to the answer. 47 C.F.R. § 1.724(g).

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- ✓ The answer must contain a certification that the defendant has made good faith settlement efforts. 47 C.F.R. § 1.724(h).
- Reply:
 - ✓ A complainant has 3 days after service of the answer to file a reply. 47 C.F.R. § 1.726(a).
 - ✓ The reply must contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments. 47 C.F.R. § 1.726(c).
 - ✓ The reply must include an information designation identifying witnesses with knowledge of facts alleged and describing all relevant documents. 47 C.F.R. § 1.726(d).
 - ✓ Copies of all documents upon which the complainant relies to support its facts and arguments set forth in the reply must be attached to the reply. 47 C.F.R. § 1.726(e).
- Other Submissions:
 - ✓ A request for a Commission order on a motion must be made by written motion, stating with particularity the grounds for the motion, relevant authority, and relief sought. 47 C.F.R. § 1.727.

Dispositive motions (and oppositions thereto) must contain proposed findings of fact and conclusions of law, and motions to compel discovery must contain a certification that a good faith attempt was made to resolve the discovery dispute. 47 C.F.R. §§ 1.727(b), (d), 1.729(f).

Facts relied upon in such motions must be supported by documentation or affidavits. 47 C.F.R. § 1.727(b).

Oppositions to motions must be made within five business days of the motion's filing. 47 C.F.R. § 1.727(e).

All motions and oppositions to motions must contain proposed orders, in hard copy and on disk. 47 C.F.R. § 1.727(c), (d).
 - ✓ Parties may file with their initial pleadings requests for interrogatories seeking discovery of non-privileged matter that is relevant to the material facts in dispute in the proceeding; the complainant may file within three days of defendant's answer a further request for interrogatories. 47 C.F.R. § 1.729(a).

The responding party must file and serve any opposition/objection to the requests for interrogatories. 47 C.F.R. § 1.729(c). Interrogatories that the Commission orders to be answered are to be answered separately and fully in writing under oath. 47 C.F.R. § 1.729(d), (e).
 - ✓ A party may file a Motion to Compel if the response to its interrogatories is inadequate. 47 C.F.R. § 1.729(f).
 - ✓ The Commission may order further discovery. 47 C.F.R. § 1.729(h).

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- ✓ Parties may be required to file briefs summarizing the facts and issues presented in the pleadings and other record evidence. 47 C.F.R. § 1.732(a). The briefs must include all relevant documents as well as proposed findings of fact and conclusions of law. 47 C.F.R. § 1.732(b).
- ✓ The Commission may require the parties to submit additional information. 47 C.F.R. § 1.729(g).
- ✓ Before the initial status conference, the parties must discuss, and attempt to reach agreement on discovery issues and the factual issues to which they can stipulate. Following that meeting, and at least two days before the initial status conference, they must submit to the staff a joint statement of stipulated facts, disputed facts, and key legal issues. 47 C.F.R. §§ 1.732(h), 1.733(a).
- ✓ Following the initial status conference, the parties must submit either (1) a joint proposed order memorializing the oral rulings made during the conference to the Commission (within one business day); 47 C.F.R. § 1.733(f)(1); or (2) a transcript of an audio recording of the status conference (within three business days). 47 C.F.R. § 1.733(f)(2).
- Accelerated Docket Proceedings:
 - ✓ Parties to formal complaint proceedings may request that their dispute be included on the Commission's Accelerated Docket ("AD"). Many, but not all, of the requirements outlined above apply to AD proceedings (albeit with shorter pleading deadlines), and certain other procedural rules (discussed below) apply that do not apply to other formal complaint proceedings. 47 C.F.R. § 1.730(a).
 - ✓ Any party that contemplates filing a formal complaint and wishes to have the complaint included on the AD must transmit a request so stating, by phone or in writing, to the Chief of the Enforcement Bureau's Market Disputes Resolution Division. 47 C.F.R. § 1.730(b). A defendant to a complaint proceeding may request in writing inclusion of the proceeding on the AD. 47 C.F.R. § 1.730(c).
 - ✓ If a matter is accepted for handling on the AD, the complainant must file with its complaint a letter stating that it has gained admission on the AD. 47 C.F.R. § 1.730(b).
 - ✓ Two days before the initial status conference, parties to an AD proceeding must submit a joint statement detailing the agreements that they have reached with respect to discovery, the facts to which they have agreed to stipulate, and the disputed facts or legal issues of which they can agree to a joint statement. 47 C.F.R. § 1.733(i)(3).
 - ✓ Each party to an AD proceeding also must submit two days before the initial status conference a separate statement of the disputed facts and legal issues presented by the complaint proceeding, any additional discovery that the party seeks, any reply (if applicable) to affirmative defenses contained in the answer (including witness and document information), and, if a defendant, any expert evidence. 47 C.F.R. § 1.734(i)(4).

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- ✓ Parties to an AD proceeding must serve with their complaint, answer, or pre-status-conference filing all documents in their possession, custody, or control that are likely to bear significantly on the issues raised in their respective pleadings. 47 C.F.R. §§ 1.721(f)(2)(i), 1.724(k)(7), 1.726(g)(4), 1.729(i)(1).
- ✓ Parties to an AD proceeding may request in their pre-status-conference filing the production of additional documents or leave to propound a limited number of interrogatories or to conduct a reasonable number of depositions. 47 C.F.R. §§ 1.729(i)(2), (3), 1.733(i)(4).
- ✓ The Commission may conduct a mini-trial (*i.e.*, hearing) in AD proceedings during which parties present evidence and argument in support of their cases. Three days before the mini-trial, parties are required to exchange exhibits that they may introduce during the proceeding and lists of witnesses whom they may call. 47 C.F.R. § 1.730(g)(3).
- ✓ Parties to an AD proceeding must submit proposed findings of fact and conclusions of law no less than two days before the beginning of the mini-trial. 47 C.F.R. § 1.730(g)(5). Parties may, but are not required to, submit revised proposed findings of fact and conclusions of law within three days after the conclusion of the mini-trial. 47 C.F.R. § 1.730(g). Separate briefs are not permitted in AD proceedings in which a mini-trial is held. 47 C.F.R. § 1.730(g)(1).
- ✓ Parties to an AD proceeding must arrange for the preparation of, and file with the Commission three days after the mini-trial, a stenographic transcript of the mini-trial proceedings. 47 C.F.R. § 1.730(g)(6).
- ✓ A party to an AD proceeding that wishes to obtain review of a staff decision issued on delegated authority must file an application for review within 15 days of notice of the decision. 47 C.F.R. § 1.730(h).

Similarly, challenges to a recommended staff decision (relating to issues that may not be decided on delegated authority) must be filed as comments within 15 days of the release of the staff recommended decision.

Opposition comments may be filed within 15 days, and reply comments with ten days thereafter. 47 C.F.R. § 1.730(h).

As noted on the Form OMB 83-I, the information collection requirements described above may affect individuals or households. As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and OMB regulations, M-03-22 (September 22, 2003), the FCC has completed both a system of records, FCC/EB-3, "Investigations and Hearings," and a Privacy Impact Assessment (PIA), to cover the collection, maintenance, use, and disposal of all personally identifiable information PII that may be submitted as part of a formal complaint filed against a common carrier:

- (a) The system of records notice (SORN) was last published in the *Federal Register* on April 6, 2006 (65 FR 17234, 17238), and is posted on the FCC's Privacy Act webpage at: <http://www.fcc.gov/omd/privacyact/records-systems.html>.
- (b) The Privacy Impact Assessment was completed on May 22, 2009, and is posted on the FCC's Privacy Act webpage at: http://www.fcc.gov/omd/privacyact/System_of_records/pia-investigations-hearings.pdf.

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2. The Commission uses the information detailed in the Justification to determine the sufficiency of complaints and to resolve the merits of disputes between parties. Orders issued by the Commission in formal complaint proceedings are based upon evidence and argument produced by the parties in accordance with the Formal Complaint Rules. If the information were not collected, the Commission would not be able to resolve common carrier-related complaint proceedings, as required by Section 208 of the Act.
3. The Formal Complaint Rules require the submission of proposed orders on computer disk, in addition to hard copy (47 C.F.R. § 1.734(d)). The Commission may waive this requirement upon a showing of good cause (47 C.F.R. § 1.734(d)). Parties may serve certain documents on each other by facsimile (47 C.F.R. § 1.735(f)(3)). Additionally, the FCC Form 485 is posted on the FCC website for downloading and printing.
4. A complainant must state whether suit has been filed in any court or other government agency based on the same claim or set of facts, or whether the complaint seeks prospective relief identical to the relief proposed or at issue in another proceeding before the Commission. 47 C.F.R. § 1.721(a)(9). Thus, the Commission attempts to identify duplication. If there are no duplicative proceedings, it is unlikely that information similar to the information that is obtained via the Formal Complaint Rules is already available. Each dispute involves individual parties and unique facts, and, as stated above, it is essential that the Commission develop an adequate legal and factual record in order to adjudicate disputes and, potentially, award damages.
5. The Formal Complaint Rules require complainants and defendants to support factual allegations in their pleadings, through documentation and affidavits, and to identify individuals with knowledge, and describe all relevant documents early in the process. The Formal Complaint Rules seek to eliminate or reduce significantly the need for multiple rounds of discovery requests and protracted discovery disputes, thereby significantly reducing the burden on small business entities.
6. The Commission has no control over the frequency of complaints, which are filed within the sole discretion of a complaining party. The filing of complaints depends entirely upon the complainant's perception that it has a cause of action against a common carrier subject to the Communications Act of 1934, as amended. If the information were not collected in response to the filing of a formal complaint, the Commission would not be able to resolve common carrier-related complaint proceedings, as required by Section 208 of the Act.
7. As detailed above, the Commission has established certain response times during the pleading cycle that are less than 30 days. These response times are necessary to the expeditious resolution of common carrier complaints (some of which are subject to statutory deadlines), and the response times are comparable to response times applicable to proceedings in federal district courts.¹

¹ The rules require that respondents prepare written responses to a collection of information in fewer than 30 days after receipt. A defendant to a complaint action is required to file an answer within 20 days of service of a complaint. A complainant is required to file a reply within 3 days of service of the answer. Parties may also be required to file, in less than 30 days after receipt of the documents requiring responses, joint statements, briefs, applications for Commission review of staff decisions, and objections to recommended decisions. These response times are necessary to the expeditious resolution of common carrier complaints (some of which are subject to statutory deadlines).

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The Formal Complaint Rules contain a process by which confidential treatment can be afforded for material that a party believes in good faith falls within an exemption to disclosure under the Freedom of Information Act. See 47 C.F.R. § 1.731.

8. The Commission published a notice in the Federal Register initiating a 60-day comment period on December 30, 2010 (74 FR 69096). No comments were received as a result of this notice. A copy of the notice is included in this submission to the OMB.
9. No gifts or payments will be given to respondent for this collection.
10. The Formal Complaint Rules contain a process by which confidential treatment can be afforded for material that a party believes in good faith falls within an exemption to disclosure under the Freedom of Information Act. See 47 C.F.R. § 1.731. In addition, the Commission has both a SORN and PIA to cover any PII that may be submitted, as noted in Question 1.
11. This collection may address personal matters of a sensitive nature such as PII. As noted in Question 1, the FCC has both a SORN and a PIA to cover this PII.
12. The following represents the estimates of the hour burdens of the collections of information relating to regular formal complaint proceedings and complaints handled on the AD.

The Commission estimates that 15 formal complaints will be filed each year, including FCC 485 forms with those complaints.

In addition, the Commission estimates that 10 requests for consideration on the accelerated docket will be received, and that, as a result, 1 case will be accepted on the AD and 1 mini-trial will be held.

These estimates are based on FCC staff's knowledge and experience, as are the estimates of preparation times.

Total Number of Respondents: 222

Total Number of Responses Annually: 222

Filing or event	Complainant hours	Complainant's Contract Attorney	Defendant's hours	Defendant's Contract Attorney	Total Hours
FCC 485	0.5	1	0	0	1.5
Request for AD Treatment	1	5	0	0	6
Complaint	8	60	0	0	68
Answer	0	0	8	60	68
Reply	4	24	0	0	28
Document Production	12	4	12	4	32
Joint Statement	4	24	4	24	56
Status Conference(s)	2	2	2	2	8
Briefs	4	40	4	40	88
Proposed Findings of Fact and Conclusions of Law	0.5	6	0.5	6	13
Mini-Trial	4	16	4	16	40
Mini-trial Transcripts					10

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15 FCC 485s filed x 0.5 hour = 7.5 hours
 10 Requests for AD Treatment x 1 hour = 10 hours
 15 Complaints x 8 hours = 120 hours
 15 Responses x 8 hours = 120 hours
 15 Replies x 4 hours = 60 hours
 15 Document Production x 12 hours (complainant) = 180 hours
 15 Document Production x 12 hours (defendant) = 180 hours
 15 Joint Statements x 4 hours (complainant) = 60 hours
 15 Joint Statements x 4 hours (defendant) = 60 hours
 15 Status conferences x 2 hours (complainant) = 30 hours
 15 Status conferences x 2 hours (defendant) = 30 hours
 15 Briefs x 4 hours (complainant) = 60 hours
 15 Briefs x 4 hours (defendant) = 60 hours
 15 Proposed findings x 0.5 hours (complainant) = 7.5 hours
 15 Proposed findings x 0.5 hours (defendant) = 7.5 hours
 1 mini-trial x 4 hours (complainant) = 4 hours
 1 mini-trial x 4 hours (defendant) = 4 hours

Total annual burden hours = 1,000.5 hours (rounded to 1,001 hours)

The Commission estimates that the burden is distributed among the three effected groups as follows:

90% Businesses and not-for-profit Institutions: 900 hours
 5% State, Local, or Tribal Governments: 50 hours
 5% Federal Government: 50 hours

The Commission estimates that the reporting, recordkeeping, and 3rd party disclosure requirements each total one-third of the burden estimates:

Reporting requirements: 333.5 hours

90% Businesses and not-for-profit Institutions: 300.15 hours
 5% State, Local, or Tribal Governments: 16.68 hours
 5% Federal Government: 16.68 hours

Recordkeeping requirements: 333.5 hours

90% Businesses and not-for-profit Institutions: 300.15 hours
 5% State, Local, or Tribal Governments: 16.68 hours
 5% Federal Government: 16.68 hours

3rd party disclosure: 333.5 hours

90% Businesses and not-for-profit Institutions: 300.15 hours
 5% State, Local, or Tribal Governments: 16.68 hours
 5% Federal Government: 16.68 hours

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13. Annual Cost Burden:

We assume that the complainant/defendant will use contract attorneys in the preparation of the required documents. It is estimated that this attorney will have an average hourly salary of \$300/hour.

We also assume that complainant/defendant will use a contract stenographer to prepare the stenographic transcription of the mini-trial proceeding. This stenographer is estimated to have an average hourly salary of \$50/hour.

Fees: A fee must be submitted with filing of the FCC Form 485 (\$190 per application).
47 C.F.R. § 1.1106.

15 FCC 485s filed x 1 hour x \$300/hour = \$4,500
 10 Requests for AD Treatment x 5 hours x \$300/hour = \$15,000
 15 Complaints x 60 hours x \$300/hour = \$270,000
 15 Responses x 60 hours x \$300/hour = \$270,000
 15 Replies x 24 hours x \$300/hour = \$108,000
 15 Document Production x 4 hours x \$300/hour (complainant) = \$18,000
 15 Document Production x 4 hours x \$300/hour (defendant) = \$18,000
 15 Joint Statements x 24 hours x \$300/hour (complainant) = \$108,000
 15 Joint Statements x 24 hours x \$300/hour (defendant) = \$108,000
 15 Status conferences x 2 hours x \$300/hour (complainant) = \$9,000
 15 Status conferences x 2 hours x \$300/hour (defendant) = \$9,000
 15 Briefs x 40 hours x \$300/hour (complainant) = \$180,000
 15 Briefs x 40 hours x \$300/hour (defendant) = \$180,000
 15 Proposed findings x 6 hours x \$300/hour (complainant) = \$27,000
 15 Proposed findings x 6 hours x \$300/hour (defendant) = \$27,000
 1 mini-trial x 16 hours x \$300/hour (complainant) = \$4,800
 1 mini-trial x 16 hours x \$300/hour (defendant) = \$4,800
 1 mini-trial transcript x 10 hours x \$50/hour = \$500

Total Annual Cost Burden = \$1,361,600.00

14. Cost to the Federal Government:

The Commission will use staff attorneys at the GS-15 level (\$70/hour) to review the material submitted for each formal complaint proceeding. It is estimated that this staff attorney would spend approximately 24 hours in this review.

15 complaint proceeding filings x \$70/hour x 24 hours = \$25,200.

15. The decrease in the total annual burden hours has been adjusted due to a re-estimate of the number of requests and complaints filed with the Commission.

The decrease in total annual costs is due to the correction of several mathematical calculations.

16. The data will not be published.

17. An extension of the waiver not to publish the expiration date on the form is requested. The Commission will use an edition date in lieu of the OMB expiration date. This will obviate the need for the

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Commission to destroy existing stock of forms upon the expiration of the clearance. OMB approval of the expiration date of the information collection will be displayed at 47 C.F.R. § 0.408.

18. The Commission notes that it has determined that this information collection may affect individuals or household, *e.g.*, that PII may be submitted as part of a formal complaint, and we have included the requisite information on the SORN and PIA covering this PII as part of this supporting statement.

B. Collections of Information Employing Statistical Methods:

This information collection does not employ any statistical methods.