

FCC Seeks to Create Uniformity in Formal Complaint Processes

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This week, the Federal Communications Commission ("FCC" or "Commission") released a [Notice of Proposed Rulemaking](#) ("NPRM") to increase uniformity among several diverse sets of FCC complaint procedures. Today, there are three different mechanisms for complaints handled by either the Market Disputes Resolution Division ("MDRD") or the Telecommunications Consumers Division of the Enforcement Bureau regarding common carriers generally; pole attachments; and the accessibility for people with disabilities of advanced communications services ("ACS") and equipment under the Communications Act of 1934 (the "Act"). In the NPRM, the FCC considers harmonizing, consolidating, and streamlining the procedural rules that govern filing and resolving these formal complaints as well as introducing several new requirements. Included among the proposed new requirements is that pre-complaint settlement discussions would have to occur at the *executive* level for section 208 and ACS accessibility complaints, as is currently the case in pole attachment complaints.

The changes proposed in the NPRM are procedural in nature and thus the FCC is not required under law to undergo a formal notice and comment proceeding before changing the rules. The FCC is, however, seeking comments to inform its decision. **Comments will be due 30 days after publication of the NPRM in the Federal Register and reply comments will be due 45 days after publication.** Publication has not yet occurred.

Under current Commission rules, there are established procedures that individuals or organizations must follow when filing formal complaints which vary based on context. The NPRM focuses on the following complaint mechanisms:

1. *Common carrier complaints* - section 208 of the Act provides a process for resolution of any disputes involving common carriers;
2. *Pole Attachment Complaints* - section 224 of the Act authorizes the FCC to hear and resolve complaints about rates, terms, and conditions for access to poles and other utility rights-of-way; and
3. *ACS Accessibility Complaints* - under sections 255, 717, and 718 of the Act, the Commission can resolve complaints regarding the lack of accessibility to persons with disabilities of advanced communications services and equipment.

The FCC explicitly excludes the Open Internet complaint process from its proposals, noting that it is the subject of a [separate NPRM](#).

In this NPRM, the Commission considers creation of a uniform set of procedural rules to govern all

three formal complaint processes, although it appears some variation would remain. The section 208 (common carrier) complaint process serves as the baseline for most of the elements of the proposed more standardized approach. The ability to file complaints under section 208 has been in place since 1997, and the ACS accessibility process largely mirrors the process under section 208. Below is a summary of the changes being considered:

- **Filing Deadlines.** The FCC proposes a thirty-day (30-day) deadline for answering any formal complaint. Currently, the section 208 and ACS accessibility rules include twenty-day (20-day) response deadlines, while the pole attachment rules have a thirty-day (30-day) deadline. Additionally, replies to answers would be due within ten (10) days after service instead of the current timelines of three (3) days for section 208 and ACS accessibility complaints or twenty (20) days for pole attachment complaints.
- **Information Designations.** The section 208 and ACS accessibility processes currently require parties to identify in the complaint, answer, and reply individuals that have firsthand knowledge of the facts in their allegations. The FCC proposes to apply the same requirement to pole attachment complaints, which would more closely align all processes with a similar standard under [Federal Rule of Civil Procedure 26](#).
- **Discovery Process.** The section 208 and ACS accessibility rules outline the specific number of interrogatories a party can serve with a complaint and answer. However, the current pole attachment rules only state that the FCC may request “additional filings.” The FCC proposes a uniform approach wherein a complainant may file and serve up to ten (10) written interrogatories with its complaint; a defendant may serve up to ten (10) interrogatories with its answer; and a complainant may file up to five (5) additional interrogatories with its reply. Parties under the proposal would no longer need to request permission from the FCC to serve interrogatories, but they still will need to explain why the requested information is necessary to the resolution of the dispute. Parties also retain the right to object to any interrogatory.
- **Required Conclusions of Law.** For the section 208 and ACS accessibility process, the complaint, answer, and reply currently must include proposed findings of fact and conclusions of law. The FCC proposes eliminating this requirement for all complaint processes.
- **Section 208(b)(1) Complaints.** Section 208(b)(1) includes a five-month deadline within which the FCC must issue an order concluding any investigation of a complaint about “the lawfulness of a charge, classification, regulation, or practice.” The FCC has interpreted this provision to apply to tariffs filed with the FCC. In order to expedite complaint resolution, the FCC now proposes to require parties to a tariff complaint governed by section 208(b)(1) to engage in pre-complaint discussions with the FCC as currently occurs in most cases.
- **Settlement Discussions and Mediation.** The FCC proposes to supplement the existing requirement for a certification of pre-complaint settlement efforts under the section 208 and ACS accessibility complaint processes with a stricter requirement for such settlement discussions to occur at the “executive-level.” (This requirement already exists in the pole attachment process.) Additionally, the FCC proposes to codify the availability of the MDRD’s current staff-supervised mediation services for parties that choose to negotiate a resolution of their dispute.
- **Initial Status Conference.** Under the section 208 and ACS accessibility rules, FCC staff can now direct parties to a complaint to appear for a status conference after the answer is filed. The FCC proposes to allow staff the option to direct status conferences for pole attachment

complaints as well.

- **Accelerated Docket.** The FCC suggests consolidating all the Accelerated Docket provisions, which appear in multiple parts of the section 208 rules, into one new rule. The FCC would also streamline the rules to afford FCC staff more flexibility to tailor the accelerated docket based on the facts of a case. The proposal also calls for the option of an accelerated docket to be extended to pole attachment complaints. The rules do not, however, propose extending the treatment to disability access complaints under sections 255, 717, and 718, which was rejected in the past.
- **Shot Clock.** The FCC also seeks comment on whether it should adopt shot clocks for each of the three complaint processes addressed by the NPRM.

This proceeding addresses a few matters regarding pole attachment complaints and the related regulations under Part 1 of the FCC's Rules that were raised in the May 2017 wireline infrastructure proceeding (see our previous [client advisory](#) for more information).