

§ 14.37

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documents demonstrating its due diligence in exploring accessibility and achievability, as required by parts 6, 7, or 14 of this chapter throughout the design, development, testing, and deployment stages of a product or service. Conclusory and unsupported claims are insufficient to carry this burden of proof.

(b) Any manufacturer or service provider to whom an informal complaint is served by the Commission under this subpart shall file and serve an answer responsive to the complaint and any inquires set forth by the Commission.

(1) The answer shall:

(i) Be filed with the Commission within twenty days of service of the complaint, unless the Commission or its staff specifies another time period;

(ii) Respond specifically to each material allegation in the complaint and assert any defenses that the manufacturer or service provider claim;

(iii) Include a declaration by an officer of the manufacturer or service provider attesting to the truth of the facts asserted in the answer;

(iv) Set forth any remedial actions already taken or proposed alternative relief without any prejudice to any denials or defenses raised;

(v) Provide any other information or materials specified by the Commission as relevant to its consideration of the complaint; and

(vi) Be prepared or formatted, including in electronic readable format compatible with the Commission's Summation or other software in the manner requested by the Commission and the complainant, unless otherwise permitted by the Commission for good cause shown.

(2) If the manufacturer's or service provider's answer includes the defense that it was not achievable for the manufacturer or service provider to make its product or service accessible, the manufacturer or service provider shall carry the burden of proof on the defense and the answer shall:

(i) Set forth the steps taken by the manufacturer or service provider to make the product or service accessible and usable;

(ii) Set forth the procedures and processes used by the manufacturer or service provider to evaluate whether it

was achievable to make the product or service accessible and usable in cases where the manufacturer or service provider alleges it was not achievable to do so;

(iii) Set forth the manufacturer's basis for determining that it was not achievable to make the product or service accessible and usable in cases where the manufacturer or service provider so alleges; and

(iv) Provide all documents supporting the manufacturer's or service provider's conclusion that it was not achievable to make the product or service accessible and usable in cases where the manufacturer or service provider so alleges.

(c) Any manufacturer or service provider to whom an informal complaint is served by the Commission under this subpart shall serve the complainant and the Commission with a non-confidential summary of the answer filed with the Commission within twenty days of service of the complaint. The non-confidential summary must contain the essential elements of the answer, including, but not limited to, any asserted defenses to the complaint, must address the material elements of its answer, and include sufficient information to allow the complainant to file a reply, if the complainant chooses to do so.

(d) The complainant may file and serve a reply. The reply shall:

(1) Be served on the Commission and the manufacturer or service provider that is subject of the complaint within ten days after service of answer, unless otherwise directed by the Commission;

(2) Be responsive to matters contained in the answer and shall not contain new matters.

§ 14.37 Review and disposition of informal complaints.

(a) The Commission will investigate the allegations in any informal complaint filed that satisfies the requirements of § 14.34(b) of this subpart, and, within 180 days after the date on which such complaint was filed with the Commission, issue an order finding whether the manufacturer or service provider that is the subject of the complaint violated section 255, 716, or 718 of the

Act, or the Commission's implementing rules, and provide a basis therefore, unless such complaint is resolved before that time.

(b) If the Commission determines in an order issued pursuant to paragraph (a) of this section that the manufacturer or service provider violated section 255, 716, or 718 of the Act, or the Commission's implementing rules, the Commission may, in such order, or in a subsequent order:

(1) Direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance with the requirements of section 255, 716, or 718 of the Act, and the Commission's rules, within a reasonable period of time; and

(2) Take such other enforcement action as the Commission is authorized and as it deems appropriate.

(c) Any manufacturer or service provider that is the subject of an order issued pursuant to paragraph (b)(1) of this section shall have a reasonable opportunity, as established by the Commission, to comment on the Commission's proposed remedial action before the Commission issues a final order with respect to that action.

§ 14.38 Formal complaints.

Formal complaint proceedings alleging a violation of 47 U.S.C. 255, 617, or 619, or parts 6, 7, or 14 of this chapter, shall be governed by the formal complaint rules in subpart E of part 1, §§1.7201.740.

(a) Pleadings must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, including damages, should be pleaded fully and with specificity.

(b) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation, or a defense to such alleged violation.

(c) Facts must be supported by relevant documentation or affidavit.

(d) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority.

(e) Opposing authorities must be distinguished.

(f) Copies must be provided of all non-Commission authorities relied

upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(g) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(h) All statements purporting to summarize or explain Commission orders or policies must cite, in standard legal form, the Commission ruling upon which such statements are based.

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

[76 FR 82389, Dec. 30, 2011, as amended at 83 FR 44842, Sept. 4, 2018]

Subpart E—Internet Browsers Built Into Telephones Used With Public Mobile Services.

SOURCE: 78 FR 30230, May 22, 2013, unless otherwise noted.

§ 14.60 Applicability.

(a) This subpart E shall apply to a manufacturer of a telephone used with public mobile services (as such term is defined in 47 U.S.C. 710(b)(4)(B)) that includes an Internet browser in such telephone that is offered for sale or otherwise distributed in interstate commerce, or a provider of mobile services that arranges for the inclusion of a browser in telephones to sell or otherwise distribute to customers in interstate commerce.

(b) Only the following enumerated provisions contained in this part 14 shall apply to this subpart E.

(1) The limitations contained in § 14.2 shall apply to this subpart E.

(2) The definitions contained in § 14.10 shall apply to this subpart E.

(3) The product design, development and evaluation provisions contained in § 14.20(b) shall apply to this subpart E.