

initiate a complaint in accordance with the procedures set forth herein.

(ii) *Complaint.* Within two years of publication of a notice under paragraph (a)(1) of this section, a complainant may file a complaint with the Commission objecting to application of the encoding terms to the service at issue. Such complaint shall state with particularity the basis for objection to the encoding terms.

(A) The complaint shall contain the name and address of the complainant and the name and address of the covered entity.

(B) The complaint shall be accompanied by a certification of service on the named covered entity.

(C) The complaint shall set forth with specificity all information and arguments relied upon. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(D) The complaint shall set forth attempts made by the complainant to resolve its complaint pursuant to paragraph (a)(2)(i) of this section.

(iii) *Public notice.* The Commission shall give public notice of the filing of the complaint. Once the Commission has issued such public notice, any person otherwise entitled to be a complainant shall instead have the status of a person submitting comments under paragraph (a)(2)(iv) of this section rather than a complainant.

(iv) *Comments and reply.* (A) Any person may submit comments regarding the complaint within thirty (30) days after the date of public notice by the Commission. Comments shall be served on the complainant and the covered entity and on any persons listed in relevant certificates of service, and shall contain a detailed full statement of any facts or considerations relied on. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(B) The covered entity may file a response to the complaint and comments within twenty (20) days after the date that comments are due. Such response shall be served on all persons who have

filed complaints or comments and shall also contain a detailed full showing, supported by affidavit or declaration, of any additional facts or considerations relied on. Replies shall be due ten (10) days from the date for filing a response.

(v) *Basis for Commission determination as to encoding terms for an undefined business model.* In a permit-but-disclose proceeding, unless otherwise specified by the Commission, to determine whether encoding terms as noticed may be applied to an undefined business model, the covered entity shall have the burden of proof to establish that application of the encoding terms in the undefined business model is in the public interest. In making any such determination, the Commission shall take into account the following factors:

(A) Whether the benefit to consumers of the new service, including but not limited to earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers' control over the new service;

(B) Ways in which the new service differs from services offered by any covered entity prior to December 31, 2002;

(vi) *Determination procedures.* The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate.

(b) *Complaint regarding a service not subject to notice.* In an instance in which an interested party has a substantial basis to believe and believes in good faith that a service pursuant to an undefined business model has been launched without requisite notice, such party may file a complaint pursuant to § 76.7.

#### § 76.1907 Temporary bona fide trials.

The obligations and procedures as to encoding rules set forth in §§ 76.1904(b) and (c) and 76.1905(a) and (b) do not apply in the case of a temporary bona fide trial of a service.