

proceeding in accordance with the provisions of this rule; provided, however, that absent an order to the contrary, no service shall be required for motions which may be heard *ex parte*.

(b) *Upon a Person Represented by Counsel.* Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to Rule 102, service shall be made pursuant to paragraph (c) of this rule upon counsel, unless service upon the person represented is ordered by the Commission or the hearing officer.

(c) *How Made.* Service shall be made by delivering a copy of the filing.

Delivery means:

(1) personal service—handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof; or leaving a copy at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

(2) mailing the papers through the U.S. Postal Service by first class, certified, registered, or Express Mail delivery addressed to the person;

(3) sending the papers through a commercial courier service or express delivery service addressed to the person; or

(4) transmitting the papers by facsimile machine where the following conditions are met:

(i) the persons serving each other by facsimile transmission have agreed to do so in a writing, signed by each party, which specifies such terms as they deem necessary with respect to facsimile machine telephone numbers to be used, hours of facsimile machine operation, the provision of non-facsimile original or copy, and any other such matters; and

(ii) receipt of each document served by facsimile is confirmed by a manually signed receipt delivered by facsimile machine or other means agreed to by the parties.

(d) *When Service Is Complete.*

Personal service, service by U.S. Postal Service Express Mail or service by a commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile is complete upon confirmation of transmission by delivery of a manually signed receipt.

Comment (a): Each document a party files in connection with a proceeding, as defined in Rule 101(a), must be served on all other parties admitted to the proceeding. In general, the party serving a paper should use the same method of service on all other parties and for filing

with the Commission. Where a party uses different methods of service, the reason for doing so must be stated. Where a party is represented by counsel who has filed a notice of appearance, service ordinarily shall be made on counsel.

Revision Comment: The rule now contains a provision, paragraph (c)(4), allowing the use of facsimile transmission ("fax") for the delivery of papers. The Commission received a large number of comments on this subject. Commenters had a number of suggestions for how to implement service by fax, including: that service should not be deemed complete unless a manually signed receipt acknowledges that the transmission was readable and was received in full within the time permitted for filing; that the hearing officer be given discretion to determine whether, and under what circumstances, fax service should be allowed; that an initial agreement to allow service by fax should include an undertaking to serve documents leaving sufficient time before the filing deadline and to notify the sender promptly of any fax transmission errors; that simultaneous service of an original copy should also be made through other means; and that a written agreement of terms should be required when the parties agree to the use of fax service. Commenters disagreed whether the Commission should limit the use of facsimile transmission to cases in which all parties agree on the terms for service.

In federal court, filing by fax is permitted where authorized by local rule subject to standards approved by the Judicial Conference. See Fed. R. Civ. P. 5(e); Fed. R. App. P. 25(a). The Commission has decided to allow service by facsimile transmission where two conditions have been met. First, persons serving each other by fax must agree to do so in writing. The written agreement shall contain such terms as are necessary with respect to telephone numbers, hours of operation, and provision of paper original and any other matters. Second, receipt of a document served by fax must be confirmed by a manually signed receipt. These conditions are intended to ensure that service by fax will be both an efficient and an effective means of service.

One commenter objected to the provision in the proposed rule that would have allowed service directly upon a party where the party was represented by counsel. In response, Rule 150(b) has been amended to clarify that service upon counsel by another party is required unless service upon the person represented is specifically

ordered by the Commission or the hearing officer.

Rule 151. Filing of Papers With the Commission: Procedure

(a) *When to File.* All papers required to be served by a party upon any person shall be filed with the Commission at the time of service or promptly thereafter. Papers required to be filed with the Commission must be received within the time limit, if any, for such filing.

(b) *Where to File.* Filing of papers with the Commission shall be made by filing them with the Secretary. When a proceeding is assigned to a hearing officer, a person making a filing with the Secretary shall promptly provide to the hearing officer a copy of any such filing; provided, however, that the hearing officer may direct or permit filings to be made with him or her, in which event the hearing officer shall note thereon the filing date and promptly provide the Secretary with either the original or a copy of any such filings.

(c) *To Whom to Direct the Filing.* Unless otherwise provided, where the Commission has assigned a case to a hearing officer, all motions, objections, applications or other filings made during a proceeding prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of briefs with the Commission, shall be directed to and decided by the hearing officer.

(d) *Certificate of Service.* Papers filed with the Commission or a hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address or facsimile telephone number to which service was made, if not made in person. If the method of service to any party is different from the method of service to any other party or the method for filing with the Commission, the certificate shall state why a different means of service was used.

Comment: Since hearing officers frequently preside at locations away from the Commission's Headquarters in Washington, D.C., persons are permitted to make filings with the hearing officer, who then can forward the filings to the Secretary. Rule 351 contains additional procedures for the transmittal of the record of a proceeding before a hearing officer (and the index of the record) from the hearing officer to the Secretary.

Rule 151 requires that where the Commission has assigned a hearing officer to preside at a proceeding, the person making a motion direct his or her requests and arguments to the hearing officer, not the Commission. If