

SUPPORTING STATEMENT

A. Justification:

1. Existing Information Collection Requirements Prior to Recent Amendment of the Rule

47 C.F.R. § 1.1206 of the Commission's rules requires that a public record be made of *ex parte* presentations to decision-making personnel in "permit-but-disclose" proceedings, such as notice-and-comment rule makings and declaratory ruling proceedings. *Ex parte* presentations are written presentations not served on all parties to the proceeding or oral presentations as to which all parties have not been given notice and an opportunity to be present)

Persons making such presentations must file two copies of written presentations and two copies of memoranda reflecting new data or arguments in oral presentations no later than the next business day after the presentation, or may, if permitted file electronically.

New or Modified Information Collection Requirements Pursuant to Recent Amendment of the Rule

On February 2, 2011, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking*, Amendment of the Commission's *Ex Parte* Rules and Other Procedural Rules, CG Docket No. 10-43, FCC 11-11, which amends and reforms the Commission's rules on *ex parte* presentations made in the course of Commission rulemakings and other permit-but-disclose proceedings. 47 CFR §1206(b)(2). The *Report and Order* includes the following information collection requirements:

The modified *ex parte* rules provide as follows (all paragraph references are to the *Report and Order* unless otherwise indicated):

- (1) *Ex parte* notices will be required for all oral *ex parte* presentations in permit-but-disclose proceedings, not just for those presentations that involve new information or arguments not already in the record (Paragraphs 33-34).
- (2) If an oral *ex parte* presentation is limited to material already in the written record, the notice must contain either a succinct summary of the matters discussed or a citation to the page or paragraph number in the party's written submission(s) where the matters discussed can be found (Paragraph 35).
- (3) Notices for all *ex parte* presentations must include the name of the person(s) who made the *ex parte* presentation as well as a list of all persons attending or otherwise participating in the meeting at which the presentation was made (Paragraph 36).
- (4) Notices of *ex parte* presentations made outside the Sunshine period must be filed within two business days of the presentation (Paragraph 60).
- (5) The Sunshine period will begin on the day (including business days, weekends, and holidays) after issuance of the Sunshine notice, rather than when the Sunshine Agenda is issued (as the current rules provide) (Paragraph 45).

- (6) If an *ex parte* presentation is made on the day the Sunshine notice is released, an *ex parte* notice must be submitted by the next business day, and any reply would be due by the following business day. If a permissible *ex parte* presentation is made during the Sunshine period (under an exception to the Sunshine period prohibition), the *ex parte* notice is due by the end of the same day on which the presentation was made, and any reply would need to be filed by the next business day. Any reply must be in writing and limited to the issues raised in the *ex parte* notice to which the reply is directed (Paragraph 61).
- (7) Commissioners and agency staff may continue to request *ex parte* presentations during the Sunshine period, but these presentations should be limited to the specific information required by the Commission (Paragraph 44).
- (8) *Ex parte* notices must be submitted electronically in machine-readable format. PDF images created by scanning a paper document may not be submitted, except in cases in which a word-processing version of the document is not available. Confidential information may continue to be submitted by paper filing, but a redacted version must be filed electronically at the same time the paper filing is submitted. An exception to the electronic filing requirement will be made in cases in which the filing party claims hardship. The basis for the hardship claim must be substantiated in the *ex parte* filing (Paragraphs 52-55).
- (9) To facilitate stricter enforcement of the *ex parte* rules, the Enforcement Bureau is authorized to levy forfeitures for *ex parte* rule violations (Paragraph 66).
- (10) Copies of electronically filed *ex parte* notices must also be sent electronically to all staff and Commissioners present at the *ex parte* meeting so as to enable them to review the notices for accuracy and completeness. Filers may be asked to submit corrections or further information as necessary for compliance with the rules. Where staff believes there are instances of substantial or repeated violations of the *ex parte* rules, staff should report such to the General Counsel (Paragraph 72).
- (11) Minor conforming and clarifying rule changes proposed in the *Notice* are adopted. The only change entailing increased information collection is the requirement that parties making permissible *ex parte* presentations in restricted proceedings must file an *ex parte* notice (Paragraph 76 (vi)).

Although the affected public (respondents) includes individuals, these individuals are acting in their “entrepreneurial capacity,” and thus, there are no impacts under the Privacy Act of 1974, as amended.

Statutory authority for this collection of information is contained in sections 4(i) and (j), 303(r), and 409 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 303(r), and 409.

2. The information is used by parties to permit-but-disclose proceedings, including interested members of the public, to respond to the arguments made and data presented in the presentations. The responses may then be used by the Commission in its decision-making.
 - (a) The Commission believes that this new rule requiring all oral *ex parte* communications to be documented, and their contents described should enable those participating in our proceedings as well as those observing them to better identify and understand the issues being debated before the Commission.
 - (b) The Commission also believes that any incremental effort a party expends in providing brief

summaries or citations to what it has written is minimal, and is more than outweighed by the degree to which this requirement will facilitate the ability of everyone else involved—the Commission, staff, other parties, and the public—to understand how the issues in permit-but-disclose proceedings are being developed and refined.

- (c) The availability of the *ex parte* materials ensures that the Commission's decisional processes are fair, impartial, and comport with the concept of due process in that all interested persons can know of and respond to the arguments made to decision-making officials.
3. (a) The new rule generally requires that *ex parte* presentation be filed electronically.
 - (b) Confidential information may, however, continue to be submitted by paper filing, but a redacted version must be filed electronically at the same time the paper filing is submitted.
 - (c) An exception to the electronic filing requirement will also be made in cases in which the filing party claims a substantiated hardship.
 - (c) A copy of each electronically filed *ex parte* notice must also be sent electronically to all staff and Commission present at the *ex parte* meeting so as to enable them to review the notices for accuracy and completeness.
 4. These requirements do not duplicate any information collection requirements currently in existence.
 5. This information collection does not have a significant economic impact on a substantial number of small entities.
 6. Unless each *ex parte* presentation is placed in the official record of the proceeding in a timely manner, there is the potential for Commission decisions to be made based on data and arguments that have not been made available for review and comment by parties to the proceeding. At a minimum, this may cause a delay in a proceeding as parties seek to respond to *ex parte* presentations after the fact. At worst, the failure to report *ex parte* presentations may undermine the validity of the Commission decision.
 7. Respondents must report information whenever they make an *ex parte* presentation, which is determined by them. There are no special circumstances.
 8. Pursuant to 5 CFR §§ 1320.5, 1320.8(d), and 1320.13 of the PRA, the Commission is submitting this information collection under the “emergency processing” provisions to the Office of Management and Budget. We are requesting that OMB waive the public notice and comment period as required under 5 CFR §§ 1320.5(a)(iv) and 1320.8(d) and approve this collection by May 17, 2011. On May 2, 2011, the Notice for the *Report and Order and Further Notice of Proposed Rulemaking, Amendment of the Commission’s Ex Parte Rules and Other Procedural Rules*, CG Docket No. 10-43, FCC 11-11, appeared in the Federal Register (76 FR 24376). Now, with the submission of this information collection to OMB, the FCC intends to do the following to comply with these PRA requirements:
 - (a) Publish a notice in the *Federal Register* announcing that the Commission is seeking approval under the “emergency processing” provisions of the PRA as required by 5 CFR § 1320.8(d) to notify the public that it has sought emergency approval for this collection.

- (b) Publish a notice in the *Federal Register* following OMB's approval of this information collection announcing OMB approval of the information collection requirements, under the emergency processing provisions of the PRA, and the date on which these requirements become effective;
 - (c) Publish a notice in the *Federal Register* to begin the 60 day public comment period as part of the regular PRA approval process; and
 - (d) At the end of this 60 day comment period, the FCC will submit the requisite PRA documents to OMB via the ROCIS electronic submission portal and publish the 30 day notice in the *Federal Register*, providing the public with a further opportunity to comment on the information collection requirements while they are being reviewed by OMB.
9. There no payments or gifts were made in connection with this requirement.
10. Consistent with the Commission's rules on confidential treatment of submissions, under 47 C.F.R. §0.459, a presenter may request confidential treatment of *ex parte* presentations. In addition, the Commission will permit parties to remove metadata containing confidential or privileged information, and the Commission will also not require parties to file electronically *ex parte* notices that contain confidential information. The Commission will, however, require a redacted version to be filed electronically at the same time the paper filing is submitted, and that the redacted version must be machine-readable whenever technically possible.
11. No questions of a sensitive nature are involved with this requirement.
12. The Commission estimates that approximately 11,500 people (presenters) will participate annually in permit-but-disclose proceedings.
- (a) The participants will be required to file electronically their *ex parte* presentations or memoranda with the Office of the Secretary and with all staff and Commission present at the *ex parte* meeting so as to enable them to review the notices for accuracy and completeness.
 - (b) We estimate that these participants will file a total of 34,500 responses (three per respondent) annually.

Total Number of Respondents: 11,500

11,500 respondents x 3 responses/respondent/annum = 34,500 responses

Total Number of Responses Annually: 34,500 (*ex parte* filings)

- (c) The Commission also estimates that respondents will spend approximately forty-five minutes (0.75 hours) preparing their response per *ex parte* filing. The Commission bases its analysis on the amount of time required to prepare and copy documents for submission to the Commission and to write memoranda. Thus:

34,500 responses x 0.75 hours/response = 25,875 hours

Total Annual Hourly Burden: 25,875 hours

FCC Rules, 47 CFR § 1.1206, require presenters in permit-but-disclose proceedings to prepare and

file copies or notices of their *ex parte* presentation, which will cost the presenters approximately \$50 per hour or \$37.50 per response. Thus:

$$11,500 \text{ respondents} \times 3 \text{ responses/respondent} \times 0.75 \text{ hrs/document prep} \times \$50/\text{hr} = \$1,293,750.00$$

Total Annual “In House” Cost: \$1,293,750.00

13. (a) Total Annualized Capital/Startup Costs: None.

(b) Total Annual Cost (O&M): None.

(c) Total Annualized Cost Requested: **None**.

14. The Commission estimates that it will use FCC staff at the GS-9/Step 5 level (\$28.13/hour) to process *ex parte* filings responses required by FCC Rules.

We estimate that the *ex parte* reporting requirement will require 3,250 staff hours annually. Thus:

$$\begin{aligned} 3,250 \text{ hours/annual processing} \times \$28.13/\text{hour} &= \$91,423.44 \\ 30\% \text{ Overhead} &= \underline{\$27,427.03} \end{aligned}$$

Total Annual Cost to Federal Government: \$118,850.47

15. The responses to Questions 12 and 14 reflect the Commission’s re-evaluation of the burden estimates resulting from the revision of the Commission’s rules by the released of the *Report and Order and Further Notice of Proposed Rulemaking*, CG Docket Number 10-43, FCC 11-11, which revised estimates of the number of respondents, the number of responses per respondent, and the time required to prepare a response.

The Commission is also updating the total annual cost to the Federal Government which has increased due to the increase in the GS salary for a GS-5/Step 5 Federal employee.

16. There are no plans to tabulate or publish information collected.

17. The Commission is not seeking not to display the OMB expiration date. The OMB will publish the OMB Control number, title, and OMB expiration date as required by 47 C.F.R. § 0.408.

18. The Commission is submitting this information collection under the “emergency processing” provisions of the Paperwork Reduction Act, 5 CFR § 1320. We have requested that OMB waive the public notice and comment periods as required under 5 CFR §§ 1320.5(a)(iv) and 1320.8(d) and approve this information collection by May 17, 2011.

This information collection results from the FCC’s release of the *Report and Order and Further Notice of Proposed Rulemaking*, Amendment of the Commission’s *Ex Parte* Rules and Other Procedural Rules, CG Docket No. 10-43, FCC 11-11, on February 2, 2011, which:

(a) Retained and/or modified the existing reporting requirements in paragraphs;

(b) Added new information collection requirements; and .

- (c) Revised the burden estimates for the total number of respondents, the total number of responses, the total “in house” costs, and the total cost to the Federal Government, as explained in Question 15 above.

The Commission is making its request to OMB for emergency approval based on the fact that the *ex parte* rules apply to the hundreds of formal and informal rulemaking proceedings at the FCC. These rules insure procedural due process is afforded to interested parties and to the general public when a party to a formal or informal Commission rulemaking proceeding makes a presentation on the merits of the proceeding to decision making FCC officials. The last major amendment to these rules was adopted in 1997. In the ensuing years the FCC identified two major shortcomings with the current rules: that not all *ex parte* contacts were required to be documented, and that those that were documented often contained little information about what was actually presented and discussed. The modifications to the existing rules adopted in this Report and Order address these problems by requiring that parties file more descriptive summaries of their *ex parte* contacts, by ensuring that other parties and the public have an adequate opportunity to review and respond to information submitted *ex parte*, and by improving the FCC's oversight and enforcement of the *ex parte* rules.

In light of their importance to the procedural fairness and integrity of the Commission's decision making process, the Commission seeks to implement these rules as expeditiously as possible. The Commission cannot comply with the normal clearance procedures set forth in 5 C.F.R. § 1320 because the use of normal clearance procedures is likely to prevent the timely implementation of these critical due process safeguards. OMB emergency approval thus is vital to the timely implementation of This request for emergency processing is consistent with section 1320.13(a)(2)(i) of OMB regulations, 5 C.F.R. § 1320.13(a)(2)(i), which states that requests for emergency processing shall be accompanied by a written determination that the agency cannot reasonably comply with the normal clearance procedures under this part because “[p]ublic harm is reasonably likely to result if normal clearance procedures are followed.”

There are no other exceptions to the certification statement in Item 19 of the OMB Form 83-I.

B. Collections of Information Employing Statistical Methods:

This information collection does not employ any statistical methods.