

## 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, GC 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 C.F.R. § 1.1206(b)(2).

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 such 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* presentations 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. As noted in Question 1, the Commission released the *Report and Order and Further Notice of Proposed Rulemaking, Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, GC Docket No. 10-43, FCC 11-11, on February 2, 2011, which modified the information collection requirements in this collection. The rulemaking was published in the *Federal Register* on May 2, 2011 (76 FR 24376). Since then, the Commission has taken the following steps to comply with the requirements of the PRA:
    - (a) On May 10, 2011, the Commission published a notice in the *Federal Register* (76 FR 27048) announcing that it had sought approval from OMB for these information collection requirements under the “emergency processing” provisions of the PRA.
    - (b) On May 26, 2011, the Commission published a second notice in the *Federal Register* (76 FR 30551) announcing that OMB had approved the information collection requirements on May 16, 2011, and that they would become effective on June 1, 2011.

- (c) On August 1, 2011, the Commission published a third notice in the *Federal Register* (76 FR 45794). This notice initiated the 60 day public comment period as part of the process for seeking the regular three year approval for this information collection as required under 5 CFR § 1320.8(d) of the PRA rules.
- (d) The Commission notes that it has received no comments following publication of any of the three notices that have been published in the *Federal Register*.

- 9. 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 C.F.R. § 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 respondents x 3 responses/respondent x 0.75 hrs/document prep x \$50/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:

3,250 hours/annual processing x \$28.13/hour = \$91,423.44  
30% Overhead = \$27,427.03  
**Total Annual Cost to Federal Government: \$118,850.47**

15. The Commission notes that it is not reporting any changes to the various burden estimates in Questions 12, 13, and 14—these remain the same as those in the supporting statement that was submitted to OMB in May 2011 as part of the emergency submission.
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. As noted in Question 8, the Commission initially sought and received OMB approval for this information collection under the “emergency processing” provisions of the Paperwork Reduction Act, 5 C.F.R. § 1320.

The Commission notes that the number of annual responses was incorrectly stated in the various *Federal Register* notices—the correct number of annual responses is estimated to be 34,500..

There are no other exceptions to the certification statement in Item 19 of the OMB Form 83-I, since it received OMB’s emergency approval for this information collection on May 16, 2011.

**B. Collections of Information Employing Statistical Methods:**

This information collection does not employ any statistical methods.