



Federal Communications Commission
Washington, D.C. 20554

May 2, 2011

Mr. Cass Sunstein, Administrator
Office of Information and Regulatory Affairs (OIRA)
Office of Management and Budget
ATTN: Docket Library
NEOB Room 10012
Washington, D.C. 20503

Dear Mr. Sunstein:

The Federal Communications Commission (Commission) is requesting approval under the “emergency processing” provisions of the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. § 3507, for the revised information collection requirements that the Commission adopted in a Report and Order, Amendment of the Commission’s *Ex Parte* Rules and Other Procedural Rules, GC Docket No. 10-43, FCC 11-11 (rel. Feb. 2, 2011). The revisions would affect our collection 3060-0430. We request that OMB approve the information collection requirements by May 17, 2011, pursuant to 5 C.F.R. § 1320.13(b).

The *ex parte* rules apply to the hundreds of adjudications 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 FCC identified two major shortcomings with the current *ex parte* 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 the Commission’s 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.

To assist your review of this emergency approval request, set forth below is a summary of the revised rules with the corresponding paragraph number in the document where each rule revision is discussed.

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. The rules are modified to require that 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)).

In light of the importance of these rules to the procedural fairness and integrity of the Commission's decision making process, the Commission seeks to implement them 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 will delay the timely implementation of these critical due process safeguards. OMB emergency approval thus is vital to avoid the public harm that is likely to result if normal clearance procedures are followed. 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.”

If you need any additional information to complete the OMB approval of this request, please contact me immediately. I can be reached by telephone at (202) 418-0217 or by e-mail at Leslie.Smith@fcc.gov.

Sincerely,

Leslie F. Smith
Performance Evaluation and Records
Management

Enclosures