

JUSTIFICATION FOR EMERGENCY CLEARANCE

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 contained in 3060-0430, *Amendment of the Commission’s Ex Parte Rules and Other Procedural Rules*, GC Docket No. 10-43, FCC 11-11 (Feb. 2, 2011). Specifically, 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 conducted by the FCC. These rules insure procedural due process is afforded to interested parties and to the general public by requiring an informational filing whenever 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: 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.

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)).

In proposing these amendments to its *ex parte* rules the Commission noted the possibility that new information collection requirements would result, and specifically asked the general public and OMB to comment on these issues, as required by the Paperwork Reduction Act. (*Notice of Proposed Rulemaking in GC Docket No. 10-43*, 25 FCC Rcd 2403, 2420 at para. 52 (2010).) We also carefully considered the burdens of the new rules in adopting them. (*See, e.g., Report and Order*, paragraphs 34, 35, 45, 54.)

These new and modified *ex parte* rules are essential to the procedural fairness and integrity of the Commission's decision making process, and therefore the Commission seeks to implement them as expeditiously as possible. Compliance with the normal clearance procedures set forth in 5 C.F.R. § 1320 would delay the implementation of these critical due process safeguards. OMB emergency approval is therefore vital to avoid the public harm that will result from applying the normal clearance procedures to the modified *ex parte* rules.