



Federal Communications Commission  
Washington, D.C. 20554

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DA 12-586

## Small Entity Compliance Guide

### Amendment of the Commission's *Ex Parte* Rules and Other Procedural Rules

Report and Order and Further Notice of Proposed Rulemaking  
FCC 11-11  
GC Docket No. 10-43  
Released: February 2, 2011

**This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.**

**In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:**

**1-888-CALL-FCC (1-888-225-5322)  
TTY: 1-888-TELL-FCC (1-888-835-5322)  
Fax: 1-866-418-0232  
[fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)**

## **I. BACKGROUND**

The Commission's ex parte rules (47 C.F.R. §§ 1.1200-1216) help ensure the fairness integrity, and transparency, of Commission proceedings. They govern the ability of people outside the Commission to communicate with Commission decision-makers and how those communications are disclosed.

An "ex parte" presentation is a communication directed to the merits or outcome of a proceeding that (1) if written, is not served on all the parties to the proceeding, and (2) if oral, is made without giving all of the parties advance notice and an opportunity to be present. Under the ex parte rules, there are three types of proceedings:

- In exempt proceedings, such as notices of inquiry, ex parte presentations may be freely made, and no disclosure is required.
- In permit-but-disclose proceedings, such as most rulemakings, ex parte presentations to decision-makers are permitted but must be disclosed on the record.
- In restricted proceedings, such as formal complaint proceedings and most licensing proceedings, ex parte presentations both to and by decision-makers are prohibited.

Special restrictions on presentations, whether ex parte or not, apply during the Sunshine period. The Sunshine period begins when the Commission releases a public notice announcing that a matter will be considered at an Open Commission Meeting, and ends when the Commission releases a decision or order relating to the matter, the matter is deleted from the Sunshine agenda, or the matter is returned to the staff.

## **II. OBJECTIVES OF THE PROCEEDING**

The Commission amended the ex parte rules to enhance their effectiveness and clarity. The amendments change in significant respects the obligations of people making presentations to Commission decision-makers. The amendments affect both the timing and content of the disclosures that must be made. The amendments also affect how the rules will be enforced.

## **III. RULES THAT THE COMMISSION AMENDED AND COMPLIANCE REQUIREMENTS**

1. Section 1.1206(b), which sets forth the requirements for reporting ex parte presentations in permit-but-disclose proceedings, has been amended in several respects. Summaries of oral presentations, such as meetings or telephone calls, must be filed for all presentations, not just those in which new data or arguments are presented. The ex parte notice must summarize the data or arguments presented or cite to the person's prior filings containing the data or arguments.
2. The deadlines for filing copies of written presentations or summaries of oral presentations have also been amended. Persons must generally file within two business days after the presentation.

If the presentation is made the day a Sunshine notice issued with respect to the matter, the filing must be made the next business day, and replies addressing the content of the filing may be made the day after that. If the presentation is permitted during the Sunshine period (because it is subject to an exemption), the filing must be made by the end of the same day and replies may be filed the next day.

3. Filings must be made electronically, in machine-readable format, through the Commission's electronic comment filing system, subject to a hardship exception. In the case of confidential material, a confidential version must be filed in hard copy and a public, redacted version must be filed electronically along with the request for confidential treatment of the hard copy version. Copies of summaries of oral presentations must be sent to the staff present at the meeting.
4. Section 1.208 has been amended to require that persons making non-ex parte presentations (*i.e.*, presentations where all parties have been served or given notice) must file a copy or summary of the presentation for the record, using the procedures in § 1.1206(b).
5. Section 1.1203 has been amended to provide that the Sunshine period begins at midnight on the day the Sunshine notice is released, rather than the moment it is released.
6. Section 0.111 has been amended to give the Enforcement Bureau, upon referral from the Office of General Counsel, the authority to impose forfeitures for violation of the ex parte rules.

#### **IV. Weblink and Citation**

*Amendment of the Commission's Ex parte Rules and Other Procedural Rules*, GC Docket No. 10-43, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4517 (2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-11A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-11A1.pdf).

For more information about the Commission's ex parte rules, please visit <http://www.fcc.gov/exparte> or contact David Senzel at [David.Senzel@fcc.gov](mailto:David.Senzel@fcc.gov) or (202) 418-1720.