**FCC University Course on 2011 Amendments to the *Ex Parte* Rules**

**Amendment of the Federal Communication Commission’s**

***Ex Parte Rules - Effective June 1, 2011***

The Commission’s *ex parte* rules have recently been amended. The amended rules became effective onJune 1, 2011. This presentation will describe the key amendments as they affect the public and FCC staff.

The amendments to the Commission’s *Ex Parte* Rules change in significant respects the obligations of people making presentations to Commission decision-makers. The changes affect both the content and timing of what must be filed in the record. They also affect how the rules will be enforced. Both members of the public who might make presentations and Commission staff members need to be aware of these changes.

But first, let’s review the basics.

The *ex parte* rules help ensure the fairness and integrity of Commission proceedings. An *ex parte* presentation is a presentation that, if written, is not served on all the parties to the proceeding and, if oral, is made without giving all parties advance notice and an opportunity to be present.

Under the *ex parte* rules there are three types of proceedings. In exempt proceedings, *ex parte* presentations are freely permitted. In permit-but-disclose proceedings, ex parte presentations to decision-makers are permitted but must be disclosed on the record. In restricted proceedings, *ex parte* presentations are prohibited.

Here are some of the most significant changes.

**Ex parte Revisions:**

**Disclosure Requirements**

* In Permit-but-disclose proceedings notices must be files for All oral ex parte presentations.
	+ No longer just for those involving new data or arguments.

The first area where revisions have been made is in requirements for disclosure. As the amendment applies to permit-but-disclose proceedings such as rulemakings, notices must be filed for all oral ex parte presentations unless an exemption applies. Under previous rules, notices were only required for those presentations that involved new data or arguments.

**Ex parte Revisions:**

**Disclosure Requirements**

* The *ex parte* notice must:
	+ Identify the person who presented; and
	+ contain a list of everyone attending or otherwise participating.

A second revision in requirements for disclosure involves the contents of the *ex parte* notice that summarize an oral presentation. The *ex parte* notice must identify the person who made the presentation and contain a list of everyone attending or otherwise participating in the *ex parte* meeting.

**Ex parte Revisions:**

**Disclosure Requirements**

* If the presentation includes new facts or arguments, the notice must contain a detailed summary.

As under the old rules, if the presentation includes new facts or arguments, the notice must contain a detailed summary of those new facts or arguments.

**Ex parte Revisions:**

**Disclosure Requirements**

* For facts or arguments already in written filings, the notice must provide either:
	+ A detailed summary, or
	+ A citation to the relevant portions.

For facts or arguments already in the presenter’s written filing in the record, the notice must provide either a detailed summary or a citation to the relevant portions of the party’s earlier written submissions.

**Ex parte Revisions:**

**Disclosure Requirements**

* *Ex parte* notices must be filed within two business days of presentation.
	+ Representing an extension of the previous one-day filing period.

Another revision in requirements for disclosure requires that *ex part*e notices generally must be filed within two business days of the presentation. This is an extension of the previous one-day filing period and is intended to accommodate the increased disclosure obligations.

**Ex parte Revisions:**

**Disclosure Requirements**

* In restricted proceedings, people making permissible oral or written presentations now have an obligation to file a copy or summary.
	+ Procedures used are the same as *ex parte* presentations in permit-but-disclose proceedings

Additionally, in restricted proceedings, people making presentations on a non-*ex parte* basis – in other words, where all parties have been served or given advance notice -- have an obligation to file a copy or summary of the presentation in the record. The procedures used are the same as those applicable to ex parte presentations in permit-but-disclose proceedings, such as rulemakings.

**Ex parte Revisions:**

**Sunshine Period**

* Notices of *ex parte* presentations made during the Sunshine period must be filed the same business day.
* Replies must be filed the next business day.
	+ Replies are limited to issues raised during the presentation.

Another area where revisions have been made is in the requirements for timeliness of disclosure during the Sunshine period.

The Sunshine period is intended to give the Commission a period of repose in which to make its decisions. During the Sunshine period, all presentations, with certain exceptions, are prohibited whether ex parte or not.

Unless an exemption applies, presentations continue to be prohibited during the Sunshine period. But, if an exemption does apply, notices of *ex parte* presentations made during the Sunshine period must be filed the same day. Replies are allowed and must be filed the next business day; and they are limited to issues raised in the presentation to which they reply.

**Ex parte Revisions:**

**Sunshine Period**

* Notices of presentations made on the day the Sunshine notice is released must be filed the next business day.
* Any reply must be filed the following business day.

*Ex parte* notices of presentations that are made on the day the Sunshine notice is released must be filed the next business day. Any reply must be filed the following business day.

**Ex parte Revisions:**

**Sunshine Period**

* The Sunshine period will begin at midnight the day the Sunshine notice is issued.
	+ Previously the Sunshine period began when the Sunshine notice was issued.

For clarity and predictability, the Sunshine period will now begin at midnight on the day the Sunshine notice is issued, rather than at the moment the Sunshine notice is issued.

For example, if the Sunshine notice was issued on Monday afternoon, the Sunshine period begins on Tuesday morning at 12:01 am.

**Ex parte Revisions:**

**Electronic Filing**

* Ex parte notices must now be filed electronically.
	+ Filed in machine-readable form, e.g., .doc or .xml
* If a confidential filing,
	+ A public version must be filed electronically, and
	+ A confidential version in hardcopy

There are new provisions in the report and order concerning electronic filing. In most cases, ex parte notices must be filed electronically and must be filed in machine-readable form (such as .doc or .xml). In the case of confidential filings, a public version must be filed electronically and a confidential version filed in hard copy.

**Ex parte Revisions:**

**Enforcement**

* By requiring notices of *ex parte* meetings to be copied on the staff present, the rules are intended to enhance the staff's ability to:
	+ Review the ex parte notice for accuracy and completeness;
	+ Request any amendments necessary; and
	+ Report instances of substantial or repeated violations to the FCC's General Counsel.

In the final area of revisions, FCC staff are provided with additional tools for enforcement of *ex parte* rules.

By requiring notices of *ex parte* meetings to be copied on the staff present, generally by email, the rules are intended to enhance the staff’s ability to review the ex parte notice for accuracy and completeness, to request any amendments necessary and to report instances of substantial or repeated violations to the FCC’s General Counsel.

**Ex parte Revisions:**

**Enforcement**

* The Office of General Counsel has authority to issue rulings on whether *ex parte* rules have been violated
	+ When OGC believes a forfeiture or citation may be warranted, it will now refer to the Enforcement Bureau.

The Office of General Counsel continues to have authority to issue rulings on whether the *ex parte* rules have been violated. When the Office of General Counsel believes that a forfeiture or citation may be warranted, it will now refer the matter to the Enforcement Bureau.

As before, the parties to Commission proceedings and Commission staff should report suspected violations of the *ex parte* rules to the Office of the General Counsel.

**Ex parte Revisions:**

**Enforcement**

* Authority has been delegated to the Enforcement Bureau to levy forfeitures for violations of the *ex parte* rules.

And lastly, authority has been delegated to the Enforcement Bureau, upon referral from the General Counsel, to levy forfeitures for violations of the *ex parte* rules. The Bureau has delegated authority to levy forfeitures.

**For Further Information:**

* FCC's website:
<https://www.fcc.gov/events/revised-ex-parte-and-procedural-rules-tutorial>
* Contact David Senzel, OGC Administrative Law Division
David.Senzel@fcc.gov
202-418-1720

In summary, these are some of the most significant changes to the *ex parte* rules. You can find further information about the *ex parte* rules on the Commission’s website, at <http://www.fcc.gov/ogc/xprte.html>

If you have questions about the *ex parte* rules, you may also contact David Senzel in the Office of General Counsel’s Administrative Law Division at David.Senzel@fcc.gov or 202-418-1720.