

The FCC's Revised *Ex Parte* and Procedural Rules



May 6, 2011

Hosted by the FCC's Office of General Counsel and Consumer and Governmental Affairs
Bureau, and the Federal Communications Bar Association's Access to Government,
Continuing Legal Education, and Professional Responsibility Committees

Two Orders, Same Goals:

Ex Parte Reform

Amendment of the Commission's Ex Parte Rules and Other Procedural Rules, FCC 11-11, GC Docket No. 10-43, Report and Order and Further Notice of Proposed Rulemaking (rel. Feb. 2, 2011), 76 Fed. Reg. 24376 (May 2, 2011) (R&O), 76 Fed. Reg. 24434 (May 2, 2011) (FNPRM).

Procedural Reform

Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, FCC 11-16, GC Docket No. 10-44, Report and Order (rel. Feb. 4, 2011), 76 Fed. Reg. 24383 (May 2, 2011).



Ex Parte Reform

- All oral ex parte presentations require notice.
- An oral *ex parte* presentation is a communication related to the merits of a proceeding made without advance notice to the parties and an opportunity for them to be present.

OLD RULE: A person making an oral *ex parte* presentation must file a notice if the presentation contained data or arguments not already reflected in that person's filings.

NEW RULE: A person who makes an oral *ex parte* presentation must ALWAYS file an *ex parte* notice.

47 C.F.R. § 1.1206(b)(1).



Ex Parte Reform

- *Ex parte notices must contain additional information.*

OLD RULE: Summarize any new data or arguments not already reflected in the presenter's written filings in the proceeding.

NEW RULE: Include a list of all persons attending and a summary of all data presented and arguments made. Except for new data or arguments, citations to prior filings are acceptable.

47 C.F.R. § 1.1206(b)(1).



Ex Parte Reform

- *New electronic filing requirement.*

OLD RULE: File notices on paper via the Secretary's Office or electronically on the Electronic Comment Filing System (ECFS).

NEW RULE: File electronically on ECFS (narrow exception for parties unable to comply by reason of hardship).

47 C.F.R. § 1.1206(b)(2)(i).



Ex Parte Reform

- *Electronic format requirement.*

OLD RULE: None.

NEW RULE: *Ex parte* notices should be in their “native” electronic format, such as .doc, .xml, .ppt, or searchable .pdf.

47 C.F.R. § 1.1206(b)(2)(i).



Ex Parte Reform

- *Submission of confidential information.*

OLD RULE: Comply with rule 0.459 regarding submissions of information not routinely available for public inspection.

NEW RULE: Comply with rule 0.459 by filing electronically a request that the information not be made available.

47 C.F.R. § 1.1206(b)(1)(ii).



Ex Parte Reform

- *Extra day to file notices.*

OLD RULE: No later than the next business day after the presentation.

NEW RULE: No later than two business days after the presentation, except during the Sunshine Period

47 C.F.R. § 1.1206(b)(2)(iii).



Ex Parte Reform

- *Shorter deadline during the Sunshine Period.*

OLD RULE: No later than the next business day after the presentation.

NEW RULE: If the presentation was on the day the Sunshine Notice was released, then no later than the next business day. If the presentation was during the Sunshine Period, the notice is due the same day.

47 C.F.R. § 1.1206(b)(2)(iv)-(v).



Ex Parte Reform

- *Replies to Sunshine Period ex partes are allowed.*

OLD RULE: Replies are not allowed, unless they fall within an exception to the rule prohibiting *ex partes* during the Sunshine Period.

NEW RULE: Replies are allowed, limited to the specific issues and information presented in the *ex parte* to which the reply responds.

47 C.F.R. § 1.1206(b)(iv)-(v).



Ex Parte Reform

- *Strengthened enforcement.*

OLD RULE: The General Counsel has authority to issue rulings on whether violations have occurred.

NEW RULE: The General Counsel retains his existing authority, and the Enforcement Bureau is delegated authority to levy forfeitures.

47 C.F.R. § 0.111(a)(15).



Ex Parte Reform

- *New media sites.*

OLD RULE: Case-by-case decision.

NEW RULE: Case-by-case decision. The Commission will continue to develop ways to make inclusion in more proceedings technically and practically possible.



Ex Parte Reform

Should ex parte notices disclose the real party in interest? How?

Yes. The Commission determined that it would serve the public interest to have a disclosure requirement. *But*

The Commission seeks further comment on:

- the range of proceedings to which disclosure rules should apply
- the disclosure rules that should apply to different types of entities (e.g., trade associations, corporations, individuals)
- whether to require disclosure when the information is already publicly available.



Ex Parte Reform

When will the ex parte rule changes be effective?

June 1, 2011

(subject to OMB approval)



Ex Parte Reform

When are comments and replies on the FNPRM due?

Comments due June 16, 2011.

Replies due July 18, 2011.



