



PUBLIC NOTICE

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GENERAL COUNSEL EMPHASIZES THE PUBLIC'S RESPONSIBILITIES IN PERMIT-BUT-DISCLOSE PROCEEDINGS

We emphasize once again the responsibilities that members of the public have when participating in proceedings classified as permit-but-disclose under the ex parte rules. See Public Notice, 15 FCC Rcd 19945 (2000). These proceedings include most notice-and-comment rulemakings as well as other major proceedings, such as many mergers, that are classified as permit-but-disclose on a case-by-case basis. In such proceedings, written and oral ex parte presentations are permissible provided that the persons making the presentations comply with the disclosure requirements of 47 C.F.R. § 1.1206(b). The disclosure requirements include the following:

- Any written material shown to Commission personnel during the course of a meeting, even if the materials are not left with the staff, are deemed written presentations and must be filed in accordance with the rule governing written presentations. See 47 C.F.R. §§ 1.1202(a), 1.1206(b)(1).
- Persons orally presenting data or arguments not already reflected in their written submissions in the proceeding must file summaries of the new data or arguments. The summaries must describe the substance of the new data or arguments and not merely list the subjects discussed. Summaries must disclose a party's requests, positions, and reasoning so that opposing parties are able to fully respond. Where there is ambiguity about whether data or arguments are already in the public record, the spirit of our rules would counsel parties to summarize the matters discussed at the meeting. See 47 C.F.R. § 1.1206(b)(2).
- Status inquiries must be disclosed if they: (1) state or imply a view as to the merits or outcome of a proceeding, (2) state why timing is important to a particular party or indicate a date by which a proceeding should be resolved, or (3) otherwise address the merits or outcome or influence the timing of a proceeding. A status inquiry merely expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously need not be disclosed. See 47 C.F.R. § 1.1202(a).
- The duty to ensure the adequacy of ex parte notices filed under 47 C.F.R. § 1.1206(b)(2) rests with the person making the presentation. Staff members have the discretion to request supplemental filings if they believe that the original filing is inadequate, but the obligation to file a sufficient notice must be satisfied regardless of possible requests by the staff.

- Violations of the ex parte rules may result in a person's disqualification from participating in a proceeding, or in other sanctions, such as a forfeiture. See 47 C.F.R. § 1.1216.

The Commission's ex parte rules enhance participation in permit-but-disclose proceedings and protect the integrity of the Commission's processes by ensuring the transparency of these proceedings.

Action by the General Counsel.

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