



PUBLIC NOTICE

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DA 08-1040

May 1, 2008

OPENING OF DOCKET IN RESPONSE TO AMERICAN BIRD CONSERVANCY, INC. V. FCC, 516 F.3d 1027 (D.C. CIR. 2008)

WT Docket No. 08-61

By this Public Notice, the Wireless Telecommunications Bureau announces that, effective today, it is opening WT Docket No. 08-61 in response to the decision of the Court of Appeals for the District of Columbia in *American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027 (2008), in which the Court affirmed in part and vacated and remanded in part the Commission's 2006 *Memorandum Opinion and Order* relating to a petition filed by the American Bird Conservancy, the Forest Conservation Council, and the Friends of the Earth.¹

Presentations made in connection with WT Docket No.08-61 will be subject to the "permit-but-disclose" requirements set forth in § 1.1206 of the Commission's *ex parte* rules. Specifically, under the Commission's rules, the Commission's proceeding on remand is subject to treatment by the Commission as restricted for *ex parte* purposes under § 1.1208 of the Commission's rules, unless otherwise provided.² Because this proceeding implicates broadly applicable policy issues, we find, pursuant to Note 2 to § 1.1208 and consistent with § 1.1200(a), that this proceeding should be treated as permit-but-disclose under the *ex parte* rules.³ *Ex parte* presentations in this proceeding will be allowed but must be disclosed in accordance with the requirements of § 1.1206(b).⁴ Commenters seeking to protect the confidentiality of information produced shall follow the procedures set forth in § 0.459 of the Commission's rules.⁵

Parties making oral *ex parte* presentations in this proceeding are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.⁶ More than a one-or two-sentence description of the views and arguments presented is generally required.⁷

¹ In the Matter of Petition by Forest Conservation Council, American Bird Conservancy and Friends of the Earth for National Environmental Policy Act Compliance, *Memorandum Opinion and Order*, 21 FCC Rcd 4462 (2006).

² 47 C.F.R. § 1.1208.

³ 47 C.F.R. § 1.1208 Note 2; *see also* 47 C.F.R. §§ 1.1200(a), 1.1206.

⁴ 47 C.F.R. § 1.1206(b).

⁵ 47 C.F.R. § 0.459.

⁶ *See* "Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings," *Public Notice*, 15 FCC Rcd 19945 (2000).

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For questions regarding this public notice, please contact Jennifer Flynn, Wireless Telecommunications Bureau, at Jennifer.Flynn@fcc.gov or (202) 418-0612.

⁷ See 47 C.F.R. § 1.1206(b)(2). For further guidance regarding the requirements and content of *ex parte* submissions, see also Fact Sheet, “FCC’s Ex Parte Rules,” July 2001, http://www.fcc.gov/ogc/admain/ex_parte_factsheet.html. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) as well. *Id.* § 1.1206(b).