



PUBLIC NOTICE

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**Wireless Telecommunications Bureau and Office of Engineering and Technology
Announce Ex Parte Status and Inter-Agency Confidentiality Procedures for Submissions in
GN Docket No. 15-319**

The deadline for “first wave” proposals from prospective Spectrum Access System (SAS) Administrators and Environmental Sensing Capability (ESC) operators in the 3550-3700 MHz Band (3.5 GHz Band) was May 16, 2016.¹ We received proposals from eight parties on or before the deadline. This Public Notice clarifies the *ex parte* status of any future submissions in this docket and provides guidance regarding the treatment of any confidential information submitted by the parties.

Ex Parte Presentations. Under the Commission’s *ex parte* rules, because SAS and ESC applications are not exclusive of other SAS and ESC applications, applicants “may make presentations to the Commission about their own applications provided that no one has become a party with respect to their application by other means.”² Therefore, applicants are permitted to make presentations relating to their own application without disclosing the contents of the presentation, unless a third party makes a presentation about the party’s application. However, any presentations made about other parties’ applications, about a party’s own application after any other party’s presentation regarding the application, or about the proposal review process or criteria, are *ex parte* presentations under our rules and must be disclosed as described in the next paragraph.

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules and as described above.³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte*

¹ Wireless Telecommunications Bureau and Office of Engineering and Technology Establish Procedure and Deadline for Filing Spectrum Access System (SAS) Administrator(s) and Environmental Sensing Capability (ESC) Operator(s) Applications, GN Docket No. 15-319, *Public Notice*, 30 FCC Rcd 14170 (2015) (*SAS/ESC Proposal Public Notice*); Wireless Telecommunications Bureau and Office of Engineering and Technology Extend “First Wave” Filing Deadline for Spectrum Access System (SAS) Administrator(s) and Environmental Sensing Capability (ESC) Operator(s) Proposals, GN Docket No. 15-319, *Public Notice*, DA 16-397 (2016).

² 47 C.F.R. § 1.1202(d)(1) note.

³ 47 C.F.R. §§ 1.1200 *et seq.*

presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules.⁴ In proceedings governed by section 1.49(f)⁵ of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

We note that our *ex parte* rules provide for an exemption for all *ex parte* presentations made by other federal agencies with respect to a matter over which that other Federal agency shares jurisdiction.⁶ NTIA and Department of Defense presentations regarding the proposals, for example, satisfy the criteria for this exemption. This proceeding raises significant technical issues implicating federal and non-federal spectrum allocations and users and we expect NTIA and Department of Defense staff to be prominently involved in discussions related to spectrum sharing with federal agencies. These discussions will benefit from an open exchange of information between agencies, and may involve sensitive information regarding the strategic federal use of the 3.5 GHz Band. Recognizing the value of federal agency collaboration on the technical issues raised in this proceeding as contemplated by the Commission,⁷ NTIA's shared jurisdiction over the 3.5 GHz Band, the importance of protecting federal users in the 3.5 GHz Band from interference, and the goal of enabling spectrum sharing to help address the ongoing spectrum capacity crunch, we find that this exemption serves the public interest.

Confidentiality. As stated in the *SAS/ESC Proposal Public Notice*, prospective SAS Administrators and ESC operators may request confidential treatment of information contained in their proposals or subsequent filings in accordance with section 0.459 of the Commission's rules.⁸ Consistent with the Commission's rules, such confidential information may be shared with federal agencies, including NTIA and the Department of Defense.⁹ All the provisions of law (including penalties) that relate to the unlawful disclosure of information will apply to these two agencies to the same extent and in the same manner as applicable to the Commission, and also to the same extent and manner as if the information had been collected directly by the agency.¹⁰ Pursuant to Section 0.442(d) of the

⁴ 47 C.F.R. § 1.1206(b).

⁵ 47 C.F.R. § 1.49(f).

⁶ See 47 C.F.R. § 1.1204(a)(5). Any new factual information obtained from such a presentation and relied upon by the Commission will be disclosed no later than at the time of the release of its decision. *Id.*

⁷ The Commission has delegated to the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) the responsibility for overseeing the review of SAS applications, and directed that WTB/OET conduct their review "in close consultation with NTIA and DoD." Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, *Report and Order and Second Further Notice of Proposed Rulemaking*, 30 FCC Rcd 3959 ¶ 370 (2015).

⁸ See *SAS/ESC Proposal Public Notice* at 8; 47 C.F.R. § 0.459.

⁹ 47 C.F.R. § 0.442.

Commission's rules,¹¹ any party that opposes such sharing of its confidential information to federal agencies will be afforded until May 31, 2016, in which to submit an opposition to such limited disclosure.

Questions regarding this Public Notice may be directed to Becky Schwartz, Attorney Advisor, Wireless Telecommunications Bureau, Mobility Division at (202) 418-7178 or becky.schwartz@fcc.gov, or Navid Golshahi, Electronics Engineer, Office of Engineering and Technology, Policy and Rules Division at (202) 418-2422 or navid.golshahi@fcc.gov.

¹⁰ *Id.* § 0.442(b)(3); 44 U.S.C. § 3510(b).

¹¹ 47 C.F.R. § 0.442(d)(1).