



PUBLIC NOTICE

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WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES “PERMIT-BUT-DISCLOSE” *EX PARTE* STATUS FOR PETITION FOR RULEMAKING PROCEEDING

(RM-11778)

On October 11, 2016, the Fixed Wireless Communications Coalition, Inc. (FWCC) filed a Petition for Rulemaking that requests modified coordination procedures in bands shared between the Fixed Service and the Fixed-Satellite Service (Petition).¹ On December 9, 2016, the Commission released a public notice announcing the filing of the Petition and setting dates for filing comments and reply comments of January 9, 2017, and January 22, 2017, respectively.²

EX PARTE STATUS OF THIS PROCEEDING

Unless otherwise provided by the Commission or the staff pursuant to Section 1.1200(a) of the Commission’s rules,³ a petition for rulemaking is an “exempt” proceeding under the Commission’s *ex parte* rules in which *ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed.⁴

On April 4, 2017, the Satellite Industry Association (SIA) filed a request to change the *ex parte* designation of this proceeding from exempt to “permit-but-disclose” for purposes of the *ex parte* rules.⁵ SIA states that there is a high level of interest in this proceeding “reflected by the numerous filings expressing a broad range of views with respect to the Petition’s merits.”⁶ According to SIA, changing the designation of this proceeding from exempt to permit-but-disclose will provide greater transparency into

¹ See Fixed Wireless Communications Coalition, Inc., Request for Modified Coordination Procedures in Bands Shared Between the Fixed Service and the Fixed-Satellite Service, Petition for Rulemaking, RM-11778 (filed Oct. 11, 2016) (Petition).

² See *Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed*, Public Notice, Report No. 3059 (CGB, rel. Dec. 9, 2016); 47 C.F.R. § 1.405(b) (a statement in support of or in opposition to a petition for rule making may be filed prior to Commission action on the petition but not later than 30 days after public notice is given and a reply to such a statement may be filed prior to Commission action on the petition but not later than 15 days after the filing of such a statement).

³ 47 C.F.R. § 1.1200(a).

⁴ See 47 C.F.R. § 1.1204(b)(2).

⁵ See RM-11778, Letter to Marlene H. Dortch, Secretary, FCC, from Tom Stroup, President, Satellite Industry Association (filed Apr. 4, 2017) (SIA Letter) at 1 citing 47 C.F.R. § 1.1200(a).

⁶ SIA Letter at 2.

the Commission's deliberations and facilitate discussions relating to the appropriate regulatory framework for bands shared by the Fixed Service and the Fixed-Satellite Service.⁷

The Commission may adopt modified *ex parte* procedures in situations where doing so would serve the public interest.⁸ We find that modifying the *ex parte* designation of this proceeding from "exempt" to "permit-but-disclose" will provide greater transparency into the Commission's deliberations regarding a band shared by the Fixed Service and the Fixed-Satellite Service. This is especially important given the high level of interest in the docket, reflected by the numerous filings expressing a broad range of views with respect to the Petition's merits. Additionally, because the bands are also within the scope of the *Mid-Band Spectrum Exploration Notice of Inquiry* proceeding, GN Docket No. 17-183, which the Commission has designated as a "permit-but-disclose" proceeding,⁹ harmonizing the *ex parte* status of the separate proceedings further aids transparency and efficiency by avoiding confusion or uncertainty as to *ex parte* filing obligations for the separate proceedings.¹⁰ Accordingly, as of the release date of this Public Notice, the proceeding RM-11778 shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.

Ex Parte Presentations

Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.¹¹ Persons making *ex parte* presentations in this proceeding 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).¹² 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* 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). All *ex parte* filings must be clearly labeled as such and must reference RM-11778.

Written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto (hereinafter referred to collectively as "*ex partes*") shall, when feasible, be filed through the electronic comment filing system available for that proceeding, and shall be filed in a native format (e.g., .doc, .xml, .ppt, searchable .pdf).¹³ The Commission has made the Electronic Comment

⁷ See SIA Letter at 1-2. SIA notes that facilitating on-the-record discussions will also help build a record to support any future action concerning the Petition. *Id.* at 2.

⁸ 47 C.F.R. § 1.1200(a) ("Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice.").

⁹ See *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Notice of Inquiry, GN Docket No. 17-183, FCC 17-104 (rel. Aug. 3, 2017) ("*Mid-Band NOI*"). In the *Mid Band NOI*, the Commission recognized that there are ongoing proceedings, including RM-11778, that relate to spectrum within the 3.7-24 GHz frequency range and stated that the Inquiry "is not intended to preclude us from acting on or otherwise addressing these matters prior to the development of a record in this docket, nor is it intended to prejudice any of the matters we may decide in those proceedings." *Mid-Band NOI* at 5 para. 11; see also *id.* at n.14.

¹⁰ We are releasing a separate public notice today announcing the modification of the *ex parte* status of another pending petition for rulemaking, RM-11791, that relates to spectrum in the 3.7-4.2 GHz band.

¹¹ 47 C.F.R. §§ 1.1200 *et seq.*

¹² 47 C.F.R. § 1.1206(b)(1).

¹³ See 47 C.F.R. § 1.1206(b)(2)(i).

Filing System (ECFS) available for this proceeding.¹⁴ Accordingly, *ex partes* shall be filed using ECFS unless electronic filing would present an undue hardship, in which case the person filing must request an exemption from the electronic filing requirement, stating clearly the nature of the hardship, and submitting an original and one copy of the written *ex parte* presentation or memorandum summarizing an oral *ex parte* presentation to the Secretary, with a copy by mail or by electronic mail to the Commissioners or Commission employees who attended or otherwise participated in the presentation.¹⁵

GENERAL INFORMATION

- The Petition, statements filed in support or opposition, reply comments, and *ex partes* filed optionally prior to the release date of this Public Notice are available in ECFS under RM-11778.
- Electronic filers: When feasible, *ex partes* shall be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: If, as discussed above, a person has requested an exemption from the electronic filing requirement, the person filing by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- Paper filers also shall file serve one copy of their *ex parte* filing by mail or by electronic mail to the Commissioners or Commission employees who attended or otherwise participated in the presentation. Identify the submission with RM-11778 in the subject line.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Peter Daronco, Wireless Telecommunications Bureau, Broadband Division, (202) 418-7235 or peter.daronco@fcc.gov.

By: Chief, Wireless Telecommunications Bureau

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¹⁴ See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

¹⁵ 47 C.F.R. § 1.1206(b)(2)(i). See also 47 C.F.R. § 1.1206(b)(2)(ii) (Confidential information).