

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's <i>Ex Parte</i>)	GC Docket No. 10-43
Rules and Other Procedural Rules)	
)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS
OFFICERS AND ADVISORS**

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I. INTRODUCTION

The National Association of Telecommunications Officers and Advisors (“NATOA”)¹ respectfully submits these comments to the Federal Communications Commission (“Commission”) in response to the Commission’s Public Notice, FCC 10-31, released Feb. 18, 2010 (the “Notice”). NATOA supports the Commission’s proposed modifications to reform the ex parte rules. Additionally, we think this movement for reform provides the Commission with the perfect opportunity to begin more thoroughly enforcing the ex parte rules that currently exist.

II. NATOA SUPPORTS THE COMMISSION’S PROPOSED REFORMS

A. Ex Parte Filings Should Summarize All Data and Arguments Presented.

In the Notice, the Commission proposes amending 47 C.F.R. § 1.1206 to require additional disclosure following oral ex parte presentations. The current rules require that ex parte filings include summaries of new data and arguments not contained in previous filings or

¹ NATOA is the national association that represents the communications needs and interests of local governments, and those who advise local governments. NATOA’s membership includes local government officials and staff members from across the nation whose responsibility is to advise and implement telecommunications policy for the nation’s local governments.

other written submissions.² The Commission proposes amending this rule to require that *ex parte* filings include summaries of all information presented, even data or arguments addressed in prior submissions.³ Alternatively, presenters could include citations to previous filings where such data or arguments were made.⁴

In the Notice, the Commission stated that “requiring that a memorandum be filed after every oral *ex parte* presentation would make the Commission’s processes more transparent. . . [and] would also give readers a better understanding of the content of the presentation.”⁵

NATOA agrees with the arguments made by the Commission and supports the adoption of the proposed language. Under the current *ex parte* rules, not enough information is available for interested entities to determine what issues were discussed at meetings and the extent of those discussions. The proposed rule would allow organizations, especially those without significant resources, to obtain a better picture of the content of a presentation. Many organizations have limited resources and at times must make difficult decisions about the issues to focus on in their arguments. Knowing not only that an issue was discussed, but, also how often it was discussed would assist interested entities in their strategic decision-making.

NATOA also agrees with the Commission that this additional required disclosure is not overly burdensome. The proposed rule would give the presenter the choice between summarizing all of the data and arguments presented, including those arguments previously

² 47 C.F.R. § 1.1206(b)(2) (“A person who makes an oral *ex parte* presentation subject to this section that presents data or arguments not already reflected in that person’s written comments, memoranda or other filings in that proceeding shall, no later than the next business day after the presentation, submit. . . a memorandum which summarizes the new data or arguments.”).

³ See Notice at 5. The proposed amended language for the relevant portion of 47 C.F.R. § 1.1206(b)(2) is: “A person who makes an oral *ex parte* presentation subject to this section shall submit a memorandum that summarizes all data presented and arguments made during the oral *ex parte* presentation. If the oral *ex parte* presentation consisted in whole or in part of the presentation of data or arguments already reflected in that person’s written comments, memoranda or other filings in the proceeding, the person who made such presentation may provide citations to such data or arguments in that person’s prior comments, memoranda, or other filings in lieu of summarizing them in the memorandum.”

⁴ *Id.*

⁵ *Id.*

made, or simply citing to instances in the record where they had previously made those arguments. Presenters would be free to choose the method of reporting that was most convenient and most practical in each situation. A sentence summarizing a point previously made is not more burdensome to write than a sentence summarizing a point not previously made. Therefore, the very minimal burden that would be added by the proposed rule is greatly outweighed by the benefits to fairness and transparency.

B. Electronic Filing Should be Preferred Because it Enhances Transparency.

In the Notice, the Commission proposes amending 47 C.F.R. § 1.206(b) to require that ex parte filings be made via the electronic filing system unless electronic filing would entail undue hardship.⁶ Although ex parte filings are, as a practical matter, overwhelmingly filed electronically, the current Commission rules do not show a preference for electronic filing over paper filing.

NATOA agrees with the Commission that ex parte filings should be filed electronically unless electronic filing would entail an undue burden. Electronic filings are preferable to paper filings because they increase transparency, fairness, and sustainability. While paper filings may take days to be made publically available on the Commission's website, electronic filings are almost always available within 24 hours, and often are available sooner. This decreases the delay of availability and gives all interested parties more time to react to presentations that have been made. This is especially true when presentations are made shortly before the Sunshine Period where a few days may make a difference between an interested party being able to respond or not being able to do so.

The benefits of electronic filing are amplified by the fact that there would not appear to be any general hardship in requiring electronic filing. It is possible that, in some rare cases,

⁶ Notice at 8.

electronic filing may be burdensome; however, this potential burden is explicitly removed because of the exception proposed to the rule requiring electronic filing when it would entail undue hardship.

C. The Protocol of the Sunshine Period Should be Amended.

The Commission also asks whether the protocol of the Sunshine Period should be amended. The Commission proposes to require that, during the Sunshine Period, ex parte filings be made within four hours of the meeting taking place.⁷ The Commission also proposes that any filing made for meetings that occurred during the Sunshine Period should be required to state why the meeting was permitted in the first sentence of the filing.⁸

NATOA believes that these proposals are in the interest of transparency and fairness. The Sunshine Period generally starts seven days before a proceeding will be discussed at an agenda meeting.⁹ Thus, during the Sunshine Period there is often very little time for an opposing party to respond to a presentation. Requiring notice to be provided within four hours of the meeting provides opposing parties as much notice as practicable and gives them an opportunity to respond before the proceeding is potentially closed. Additionally, a four hour window for providing notice is not unduly burdensome. Electronic filing makes filing quick and easy. Presenters do not even have to wait until they return to their office to submit a filing due to the ubiquitous availability of public internet connections at hotels, cafes, airports, and even the Federal Communications Commission building itself. Furthermore, most parties will know the contents of their presentation prior to the meeting in the vast majority of cases. Thus, any burden can usually be minimized by drafting the ex parte letter prior to the meeting. Even if the meeting addressed issues that were not anticipated, the draft could likely be updated with minimal

⁷ Notice at 9.

⁸ *Id.*

⁹ *See* 5 U.S.C. § 552b(e)(1).

burden. The minor burden of having to submit a filing within four hours is greatly outweighed by the benefits to transparency and fairness in the final hours a proceeding is open.

Transparency also requires presenters to provide clear proof that the meeting was not prohibited during the Sunshine Period. Requiring a clear statement as to the validity of the meeting will aid opposing parties in making a determination as to whether the meeting was proper or whether it should be challenged. Requiring that this statement be explicit at the beginning of the filing will help parties with limited resources efficiently evaluate their potential response to the Sunshine Period meeting.

The Commission also proposes to alter the manner in which the Sunshine Period will go into effect. Under the current rules, the Sunshine Period goes into effect immediately upon notice of such (which occurs approximately seven days prior to the agenda meeting).¹⁰ Under the proposed amendments, the Sunshine Period would go into effect at midnight of the day following the release of the notice.¹¹ NATOA agrees with the proposed change because the additional notice will give all parties an equal opportunity to respond to last minute arguments. The proposed modification would also give all parties fair warning to make final arguments before the start of the Sunshine Period.

III. THE FCC SHOULD MORE VIGOROUSLY ENFORCE THE EXISTING RULES

NATOA believes that, although the proposed rules will be a significant improvement toward increased transparency, true transparency requires an enforcement of those rules *and* enforcement of the existing rules. The proposed rules will not have any effect in improving transparency and fairness if they are not enforced. The same is true for the existing rules. Unfortunately, the existing rules are not adequately enforced.

¹⁰ See 47 C.F.R. § 1.1203(b).

¹¹ Notice at 11.

A clear example comes from the Petition for a Declaratory Ruling filed by CTIA, the Wireless Association, that formed the basis of the Commission's recent Declaratory Ruling on Wireless Facilities Siting.¹² As part of the rationale for requesting the Commission to act, CTIA made claims against local governments accusing them of unreasonably delaying decisions on wireless facilities siting applications. These accusations were made without serving notice on the local governments at issue. In fact, the accusations were often made without even directly naming the local government at issue. By taking these actions, CTIA was denying the local government the ability to respond to the accusations. These actions are contrary to interests of transparency and fairness. Transparency and fairness are not served when allegations are made against a party and that party is not given an opportunity to respond. By obscuring the identity of the specific party who is the target of accusations, the accuser is providing that party with no ability to respond, which leaves the Commission in the position of only having one side of the story. Unfortunately, in the Wireless Facilities Siting Proceeding, the Commission not only allowed CTIA to make these blind accusations, the Commission actually relied on these accusations to justify its Declaratory Ruling. The Commission must work to make sure that parties accused of improper behavior are provided proper notice so that they have the ability to respond and provide their side of the argument. Otherwise, the Commission will continue to receive blind accusations that cannot be verified or rebutted.

IV. CONCLUSION

The Commission should follow through on its proposed amendment to the ex parte rules. Specifically, the Commission should require disclosure of all issues and arguments discussed in ex parte meetings, even those that are already in the record. Also, the Commission should

¹² *In the Matter of Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, FCC 09-99, WT Docket No. 08-165.

require electronic filing unless it would be unduly burdensome. Finally, the Commission should alter the Sunshine Period by providing at least some notice of the start of that period, requiring more explicit disclosure of the exemptions to the prohibition on meetings during that period, and requiring disclosure within four hours of the meeting. In addition, the Commission should take this opportunity to recommit itself to enforcing the existing ex parte rules that have not been adequately followed.

Respectfully submitted,

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