

Federal Communications Commission

§ 1.1208

original and one copy) shall be filed for each proceeding.

NOTE 1 TO PARAGRAPH (b): Where, for example, presentations occur in the form of discussion at a widely attended meeting, preparation of a memorandum as specified in the rule might be cumbersome. Under these circumstances, the rule may be satisfied by submitting a transcript or tape recording of the discussion as an alternative to a memorandum.

(3) Notwithstanding paragraphs (b)(1) and (b)(2) of this section, in permit-but-disclose proceedings presentations made by members of Congress or their staffs or by an agency or branch of the Federal Government or its staff shall be treated as *ex parte* presentations only if the presentations are of substantial significance and clearly intended to affect the ultimate decision. The Commission staff shall prepare a written summary of any such oral presentations and place them in the record in accordance with paragraph (b)(2) of this section and place any such written presentations in the record in accordance with paragraph (b)(1) of this section.

(4) *Notice of ex parte presentations.* The Commission's Secretary or, in the case of non-docketed proceedings, the relevant Bureau or Office shall place in the public file or record of the proceeding written *ex parte* presentations and memoranda reflecting oral *ex parte* presentations. The Secretary shall issue a public notice listing any written *ex parte* presentations or written summaries of oral *ex parte* presentations received by his or her office relating to any permit-but-disclose proceeding. Such public notices should generally be released at least twice per week.

NOTE 2 TO PARAGRAPH (b): Interested persons should be aware that some *ex parte* filings, for example, those not filed in accordance with the requirements of this paragraph (b), might not be placed on the referenced public notice. All *ex parte* presentations and memoranda filed under this section will be available for public inspection in the public file or record of the proceeding, and parties wishing to ensure awareness of all filings should review the public file or record.

NOTE 3 TO PARAGRAPH (b): As a matter of convenience, the Secretary may also list on the referenced public notices materials, even if not *ex parte* presentations, that are filed

after the close of the reply comment period or, if the matter is on reconsideration, the reconsideration reply comment period.

[62 FR 15856, Apr. 3, 1997, as amended at 63 FR 24126, May 1, 1998; 64 FR 68948, Dec. 9, 1999; 66 FR 3501, Jan. 16, 2001]

RESTRICTED PROCEEDINGS

§ 1.1208 Restricted proceedings.

Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a) of this section, *ex parte* presentations (other than *ex parte* presentations exempt under § 1.1204(a) of this section) to or from Commission decision-making personnel are prohibited in all proceedings not listed as exempt in § 1.1204(b) or permit-but-disclose in § 1.1206(a) of this section until the proceeding is no longer subject to administrative reconsideration or review or judicial review. Proceedings in which *ex parte* presentations are prohibited, referred to as "restricted" proceedings, include, but are not limited to, all proceedings that have been designated for hearing, proceedings involving amendments to the broadcast table of allotments, applications for authority under Title III of the Communications Act, and all waiver proceedings (except for those directly associated with tariff filings).

NOTE 1 TO § 1.1208: In a restricted proceeding involving only one "party," as defined in § 1.1202(d), the party and the Commission may freely make presentations to each other because there is no other party to be served or with a right to have an opportunity to be present. See § 1.1202(b). Therefore, to determine whether presentations are permissible in a restricted proceeding without service or notice and an opportunity for other parties to be present the definition of a "party" should be consulted.

Examples: After the filing of an uncontested application or waiver request, the applicant or other filer would be the sole party to the proceeding. The filer would have no other party to serve with or give notice of any presentations to the Commission, and such presentations would therefore not be "ex parte presentations" as defined by § 1.1202(b) and would not be prohibited. On the other hand, in the example given, because the filer is a party, a third person who wished to make a presentation to the Commission concerning the application or waiver request would have to serve or notice the filer. Further, once the proceeding involved additional "parties" as defined by § 1.1202(d)

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(e.g., an opponent of the filer who served the opposition on the filer), the filer and other parties would have to serve or notice all other parties.

NOTE 2 TO §1.1208: Consistent with §1.1200(a), the Commission or its staff may determine that a restricted proceeding not designated for hearing involves primarily issues of broadly applicable policy rather than the rights and responsibilities of specific parties and specify that the proceeding will be conducted in accordance with the provisions of §1.1206 governing permit-but-disclose proceedings.

[62 FR 15857, Apr. 3, 1997, as amended at 64 FR 68948, Dec. 9, 1999]

PROHIBITION ON SOLICITATION OF PRESENTATIONS

§ 1.1210 Prohibition on solicitation of presentations.

No person shall solicit or encourage others to make any improper presentation under the provisions of this section.

[64 FR 68949, Dec. 9, 1999]

PROCEDURES FOR HANDLING OF PROHIBITED EX PARTE PRESENTATIONS

§ 1.1212 Procedures for handling of prohibited ex parte presentations.

(a) Commission personnel who believe that an oral presentation which is being made to them or is about to be made to them is prohibited shall promptly advise the person initiating the presentation that it is prohibited and shall terminate the discussion.

(b) Commission personnel who receive oral *ex parte* presentations which they believe are prohibited shall forward to the Office of General Counsel a statement containing the following information:

- (1) The name of the proceeding;
- (2) The name and address of the person making the presentation and that person's relationship (if any) to the parties to the proceeding;
- (3) The date and time of the presentation, its duration, and the circumstances under which it was made;
- (4) A full summary of the substance of the presentation;
- (5) Whether the person making the presentation persisted in doing so after being advised that the presentation was prohibited; and

(6) The date and time that the statement was prepared.

(c) Commission personnel who receive written *ex parte* presentations which they believe are prohibited shall forward them to the Office of General Counsel. If the circumstances in which the presentation was made are not apparent from the presentation itself, a statement describing those circumstances shall be submitted to the Office of General Counsel with the presentation.

(d) Prohibited written *ex parte* presentations and all documentation relating to prohibited written and oral *ex parte* presentations shall be placed in a public file which shall be associated with but not made part of the record of the proceeding to which the presentations pertain. Such materials may be considered in determining the merits of a restricted proceeding only if they are made part of the record and the parties are so informed.

(e) If the General Counsel determines that an *ex parte* presentation or presentation during the Sunshine period is prohibited by this subpart, he or she shall notify the parties to the proceeding that a prohibited presentation has occurred and shall serve on the parties copies of the presentation (if written) and any statements describing the circumstances of the presentation. Service by the General Counsel shall not be deemed to cure any violation of the rules against prohibited *ex parte* presentations.

(f) If the General Counsel determines that service on the parties would be unduly burdensome because the parties to the proceeding are numerous, he or she may issue a public notice in lieu of service. The public notice shall state that a prohibited presentation has been made and may also state that the presentation and related materials are available for public inspection.

(g) The General Counsel shall forward a copy of any statement describing the circumstances in which the prohibited *ex parte* presentation was made to the person who made the presentation. Within ten days thereafter, the person who made the presentation may file with the General Counsel a sworn declaration regarding the presentation and the circumstances in which it was