

§0.463 Disclosure of Commission records and information in legal proceedings in which the Commission is a non-party.

(a) This section sets forth procedures to be followed with respect to the production or disclosure of any material within the custody and control of the Commission, any information relating to such material, or any information acquired by any person while employed by the Commission as part of the person's official duties or because of the person's official status.

(b) In the event that a demand is made by a court or other competent authority outside the Commission for the production of records or testimony (e.g., a subpoena, order, or other demand), the General Counsel shall promptly be advised of such demand, the nature of the records or testimony sought, and all other relevant facts and circumstances. The General Counsel, in consultation with the Managing Director, will thereupon issue such instructions as he or she may deem advisable consistent with this subpart.

(c) A party in a court or administrative legal proceeding in which the Commission is a non-party who wishes to obtain records or testimony from the Commission shall submit a written request to the General Counsel. Such request must be accompanied by a statement setting forth the nature of the proceeding (including any relevant supporting documentation, e.g., a copy of the Complaint), the relevance of the records or testimony to the proceeding (including a proffer concerning the anticipated scope and duration of the testimony), a showing that other evidence reasonably suited to the requester's needs is not available from any other source (including a request submitted pursuant to §0.460 or §0.461 of the Commission's rules), and any other information that may be relevant to the Commission's consideration of the request for records or testimony. The purpose of the foregoing requirements is to assist the General Counsel in making an informed decision regarding whether the production of records or the testimony should be authorized.

(d) In deciding whether to authorize the release of records or to permit the testimony of present or former Com-

mission personnel, the General Counsel, in consultation with the Managing Director, shall consider the following factors:

(1) Whether the request or demand would involve the Commission in issues or controversies unrelated to the Commission's mission;

(2) Whether the request or demand is unduly burdensome;

(3) Whether the time and money of the Commission and/or the United States would be used for private purposes;

(4) The extent to which the time of employees for conducting official business would be compromised;

(5) Whether the public might misconstrue variances between personal opinions of employees and Commission policy;

(6) Whether the request or demand demonstrates that the records or testimony sought are relevant and material to the underlying proceeding, unavailable from other sources, and whether the request is reasonable in its scope;

(7) Whether, if the request or demand were granted, the number of similar requests would have a cumulative effect on the expenditure of Commission resources;

(8) Whether the requestor has agreed to pay search and review fees as set forth in §0.467 of this subpart;

(9) Whether disclosure of the records or the testimony sought would otherwise be inappropriate under the circumstances; and

(10) Any other factor that is appropriate.

(e) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors exist:

(1) Disclosure of the records or the testimony would violate a statute, Executive Order, rule, or regulation;

(2) The integrity of the administrative and deliberative processes of the Commission would be compromised;

(3) Disclosure of the records or the testimony would not be appropriate under the rules of procedure governing the case or matter in which the demand arose;

(4) Disclosure of the records, including release *in camera*, or the testimony,

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is not appropriate or required under the relevant substantive law concerning privilege;

(5) Disclosure of the records, except when *in camera* and necessary to assert a claim of privilege, or of the testimony, would reveal information properly classified or other matters exempt from unrestricted disclosure; or

(6) Disclosure of the records or the testimony could interfere with ongoing Commission enforcement proceedings or other legal or administrative proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

(f) The General Counsel, following consultation with the Managing Director and any relevant Commission Bureau or Office, is authorized to approve non-privileged testimony by a present or former employee of the Commission or the production of non-privileged records in response to a valid demand issued by competent legal authority, or a request for records or testimony received under this section, and to assert governmental privileges on behalf of the Commission in litigation that may be associated with any such demand or request.

(g) Any employee or former employee of the Commission who receives a demand for records of the Commission or testimony regarding the records or activities of the Commission shall promptly notify the General Counsel so that the General Counsel may take appropriate steps to protect the Commission's rights.

(Secs. 4(i), 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 5 U.S.C. 301; 47 CFR 0.231(d))

§0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) The Commission awards a contract to a commercial duplication firm to make copies of Commission records and offer them for sale to the public. In addition to the charge for copying, the contractor may charge a search fee for locating and retrieving the requested documents from the Commission's files.

NOTE TO PARAGRAPH (a): The name, address, telephone number, and schedule of fees for the current copy contractor are published at the time of contract award of renewal in a public notice and periodically thereafter. Current information is available at <http://www.fcc.gov/foia> and <http://www.fcc.gov/cgb>. Questions regarding this information should be directed to the Reference Information Center of the Consumer and Governmental Affairs Bureau at 202-418-0270.

(b)(1) Records routinely available for public inspection under §§0.453 and 0.455 are available to the public through the Commission's current copy contractor. Section 0.461 does not apply to such records.

(2) Audio or video recordings or transcripts of Commission proceedings are available to the public through the Commission's current copy contractor. In some cases, only some of these formats may be available.

(c)(1) Contractual arrangements which have been entered into with commercial firms, as described in this section, do not in any way limit the right of the public to inspect Commission records or to retrieve whatever information may be desired. Coin-operated and debit card copy machines are available for use by the public.

(2) The Commission has reserved the right to make copies of its records for its own use or for the use of other agencies of the U.S. Government. When it serves the regulatory or financial interests of the U.S. Government, the Commission will make and furnish copies of its records free of charge. In other circumstances, however, if it should be necessary for the Commission to make and furnish copies of its records for the use of others, the fee for this service shall be ten cents (\$0.10) per page or \$5 per computer disk in addition to charges for staff time as provided in §0.467. For copies prepared with other media, such as computer tapes, microfiche, videotape, the charge will be the actual direct cost including operator time. Requests for copying should be accompanied by a statement specifying the maximum copying fee the person making the request is prepared to pay. If the Commission estimates that copying charges are likely to exceed the greater of \$25 or the amount which the requester has indicated that he/she is prepared to