

in which *ex parte* presentations to and from Commission decision-making personnel are generally prohibited (§1.1208). In all proceedings, a certain period ("the Sunshine Agenda period") is designated in which all presentations to Commission decision-making personnel are prohibited (§1.1203). The limitations on *ex parte* presentations described in this section are subject to certain general exceptions set forth in §1.1204(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. Joint Boards may modify the *ex parte* rules in proceedings before them.

(b) Inquiries concerning the propriety of *ex parte* presentations should be directed to the Office of General Counsel.

[62 FR 15853, Apr. 3, 1997]

§ 1.1202 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Presentation*. A communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this term are communications which are inadvertently or casually made, inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken. However, a status inquiry which states or implies a view as to the merits or outcome of the proceeding or a preference for a particular party, which states why timing is important to a particular party or indicates a view as to the date by which a proceeding should be resolved, or which otherwise is intended to address the merits or outcome or to influence the timing of a proceeding is a presentation.

NOTE TO PARAGRAPH (a): A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, no view is expressed as to the merits or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved. A presentation by a party in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an *ex parte* basis subject to the provisions of §1.1204(a)(11).

(b) *Ex parte presentation*. Any presentation which:

(1) If written, is not served on the parties to the proceeding; or

(2) If oral, is made without advance notice to the parties and without opportunity for them to be present.

NOTE TO PARAGRAPH (b): Written communications include electronic submissions transmitted in the form of texts, such as by Internet electronic mail.

(c) *Decision-making personnel*. Any member, officer, or employee of the Commission, or, in the case of a Joint Board, its members or their staffs, who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisional process shall not be treated as a decisionmaker with respect to that proceeding. Thus, any person designated as part of a separate trial staff shall not be considered a decision-making person in the designated proceeding. Unseparated Bureau or Office staff shall be considered decision-making personnel with respect to decisions, rules, and orders in which their Bureau or Office participates in enacting, preparing, or reviewing.

(d) *Party*. Unless otherwise ordered by the Commission, the following persons are parties:

(1) In a proceeding not designated for hearing, any person who files an application, waiver request, petition, motion, request for a declaratory ruling,

Federal Communications Commission

§ 1.1203

or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application or members of Congress or their staffs or branches of the federal government or their staffs) filing a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application;

NOTE 1 TO PARAGRAPH (d)(1): Persons who file mutually exclusive applications for services that the Commission has announced will be subject to competitive bidding or lotteries shall not be deemed parties with respect to each others' applications merely because their applications are mutually exclusive. Therefore, such 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, e.g., by filing a petition or other opposition against the applicant or an associated waiver request, if the petition or opposition has been served on the applicant.

(2) Any person who files a complaint or request to revoke a license or other authorization or for an order to show cause which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and §1.721 of this chapter or 47 U.S.C. 255 and either §§6.21 or 7.21 of this chapter, and the person who is the subject of such a complaint or request that shows service or is a formal complaint under 47 U.S.C. 208 and §1.721 of this chapter or 47 U.S.C. 255 and either §§6.21 or 7.21 of this chapter;

(3) The subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order;

(4) In a proceeding designated for hearing, any person who has been given formal party status; and

(5) In an informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act (other than a proceeding for the allotment of a broadcast channel) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, mem-

bers of the general public after the issuance of a notice of proposed rulemaking or other order as provided under §1.1206(a) (1) or (2).

NOTE 2 TO PARAGRAPH (d): To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairman or individual Commissioners will not confer party status.

NOTE 3 TO PARAGRAPH (d): The fact that a person is deemed a party for purposes of this subpart does not constitute a determination that such person has satisfied any other legal or procedural requirements, such as the operative requirements for petitions to deny or requirements as to timeliness. Nor does it constitute a determination that such person has any other procedural rights, such as the right to intervene in hearing proceedings. The Commission or the staff may also determine in particular instances that persons who qualify as "parties" under §1.1202(d) should nevertheless not be deemed parties for purposes of this subpart.

NOTE 4 TO PARAGRAPH (d): Individual listeners or viewers submitting comments regarding a pending broadcast application pursuant to §1.1204(a)(8) will not become parties simply by service of the comments. The Media Bureau may, in its discretion, make such a commenter a party, if doing so would be conducive to the Commission's consideration of the application or would otherwise be appropriate.

NOTE 5 TO PARAGRAPH (d): A member of Congress or his or her staff, or other agencies or branches of the federal government or their staffs will not become a party by service of a written submission regarding a pending proceeding that has not been designated for hearing unless the submission affirmatively seeks and warrants grant of party status.

(e) *Matter designated for hearing.* Any matter that has been designated for hearing before an administrative law judge or which is otherwise designated for hearing in accordance with procedures in 5 U.S.C. 554.

[62 FR 15854, Apr. 3, 1997, as amended at 64 FR 68947, Dec. 9, 1999; 64 FR 72571, Dec. 28, 1999; 65 FR 56261, Sept. 18, 2000; 67 FR 13224, Mar. 21, 2002; 76 FR 24381, May 2, 2011]

SUNSHINE PERIOD PROHIBITION

§ 1.1203 Sunshine period prohibition.

(a) With respect to any Commission proceeding, all presentations to decisionmakers concerning matters listed on a Sunshine Agenda, whether ex