



PUBLIC NOTICE

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

(RM-11791)

On June 21, 2017, the Broadband Access Coalition (BAC) filed a Petition for Rulemaking to Amend and Modernize Parts 25 and 101 of the Commission’s Rules to Authorize and Facilitate the Deployment of Licensed Point-to-Multipoint Fixed Wireless Broadband Service in the 3700-4200 MHz Band that requests modified coordination procedures in bands shared between the Fixed Service and the Fixed-Satellite Service (Petition).¹ On July 7, 2017, the Commission released a public notice announcing the filing of the Petition and setting dates for filing comments and reply comments of August 7, 2017, and August 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 The Commission may adopt modified *ex parte* procedures in situations where doing so would serve the public interest.⁵ 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 3.7-4.2 GHz band is also within the scope of the *Mid-Band Spectrum Exploration Notice of*

¹ See Petition of Broadband Access Coalition for a Rulemaking to Amend and Modernize Parts 25 and 101 of the Commission’s Rules to Authorize and Facilitate the Deployment of Licensed Point-to-Multipoint Fixed Wireless Broadband Service in the 3700-4200 MHz Band, RM-11791 (filed June 21, 2017).

² See *Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed*, Public Notice, Report No. 3080 (CGB, rel. July 7, 2017); 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 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.”).

Inquiry proceeding, GN Docket No. 17-183, which the Commission has designated as a “permit-but-disclose” proceeding,⁶ 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.⁷ Accordingly, as of the release date of this Public Notice, the proceeding RM-11791 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.⁸ 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).⁹ 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-11791.

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).¹⁰ The Commission has made the Electronic Comment Filing System (ECFS) available for this proceeding.¹¹ 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.¹²

Reply Comments

As noted above, the filing deadline for reply comments is August 22, 2017. Under Section 1.405(b), a hardcopy of a reply comment must be served by mail upon the party or parties filing the

⁶ 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-11791, 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.

⁷ We are releasing a separate public notice today announcing the modification of the *ex parte* status of another pending petition for rulemaking, RM-11778, that relates to spectrum in the 3.7-4.2 GHz and other bands.

⁸ 47 C.F.R. §§ 1.1200 *et seq.*

⁹ 47 C.F.R. § 1.1206(b)(1).

¹⁰ See 47 C.F.R. § 1.1206(b)(2)(i).

¹¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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

statement or statements to which the reply is directed.¹³ In light of the modification of this proceeding to “permit-but-disclose” status, and the relatively large number of statements in support or opposition, as well as *ex partes*, filed electronically in this proceeding to date, we conclude that hardcopy service by mail is unnecessary for reply comments filed electronically in ECFS.

GENERAL INFORMATION

- The Petition, statements filed in support or opposition, and *ex partes* filed optionally prior to the release date of this Public Notice are available in ECFS under RM-11791.
- 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-11791 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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¹³ See 47 C.F.R. § 1.405(b). See also 47 C.F.R. § 1.47.