

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of	)	
	)	
Amendment of the Commission's	)	GC Docket No. 10-43
<i>Ex Parte</i> Rules and Other Procedural	)	
Rules	)	
	)	
Amendment of Certain of the Commission's	)	GC Docket No. 10-44
Part 1 Rules of Practice and Procedure and	)	
Part 0 Rules of Commission Organization	)	

**COMMENTS OF SPRINT NEXTEL**

Sprint Nextel Corporation ("Sprint") hereby respectfully submits its consolidated comments on the Notices of Proposed Rulemaking in the above captioned proceedings.<sup>1</sup> In the *Ex Parte* NPRM, the Federal Communications Commission ("Commission") seeks comment on proposals to improve its *ex parte* and other procedural rules contained in Part 1 of the Commission's rules. The Commission notes that years of experience have revealed a number of areas where its *ex parte* and procedural rules could be improved to make the Commission's decision making processes more open, transparent, and effective.<sup>2</sup> In the Procedures NPRM, the Commission proposes, among other things, rule changes to improve and streamline its processes governing reconsideration of

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<sup>1</sup> *Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, Notice of Proposed Rulemaking, GC Docket No. 10-43, FCC 10-31, 75 Fed. Reg. 14409 (March 25, 2010) ("*Ex Parte* NPRM"); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Notice of Proposed Rulemaking, GC Docket No. 10-44, FCC 20-32, 75 Fed. Reg. 14401 (March 25, 2010) ("Procedures NPRM").

<sup>2</sup> *Ex Parte* NPRM at para.1.

Commission decisions and to improve and increase use of the Commission's docket management and electronic filing systems.<sup>3</sup>

Sprint addresses below the Commission's proposals to: (1) require the filing of an *ex parte* notice for every oral *ex parte* presentation, not just presentations that present data or arguments not already reflected in the presenter's written comments, memoranda, or other filings, and to require summaries of the arguments presented or explicit references (with page and paragraph cites) to previously filed comments, (2) codify the preference for electronic filing of all *ex parte* presentations, (3) require electronic filing of notices of *ex parte* presentations during the Sunshine Period within four hours of the presentation, (4) require the submission of disclosure statements with *ex parte* notices or pleading filed with the Commission, (5) delegate authority to the staff to dismiss or deny defective or repetitive petitions filed with the Commission for reconsideration of Commission decisions and clarify that the Commission may modify a decision on its own motion within 30 days, and (6) expand the use of docketed proceedings in conjunction with increased use of electronic filing.

## **I. *Ex Parte* NPRM Comments**

### *A. Notice after EVERY Ex Parte Presentation and Disclosure of All Facts and Arguments Presented*

In the *Ex Parte* Notice, the Commission identified two limitations in the current rules governing oral presentations in permit-but-disclose proceeding – lack of a filing documenting every oral *ex parte* presentation, and a lack of completeness about what was discussed in the meeting – that reduce the transparency of the Commission's decision

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<sup>3</sup> Procedures NPRM at paras. 3-13.

making.<sup>4</sup> To remedy this situation, the Commission proposes to (1) require the filing of an *ex parte* notice for every oral *ex parte* presentation, not just presentations that present new data or arguments; and (2) require that to the extent the presentation concerned data or arguments already reflected in the presenter's written filings in the record, the notice either summarizes the data or arguments or explicitly states that the data and arguments are already reflected in prior written filings and provides specific references (including page or paragraph numbers) to those filings.<sup>5</sup>

Requiring the filing of an *ex parte* notice for every oral *ex parte* presentation will foster transparency and ensure that all parties to a proceeding are fully informed regarding the fact that *ex parte* communications are occurring. Moreover, requiring more detailed summaries regarding the data and arguments discussed will permit all parties to a proceeding to more effectively assess and respond to particular data or arguments presented during any individual *ex parte* presentation. There are limits, however, to the administrative practicality of the additional obligations proposed by the Commission.

The Commission properly proposes, for example, to require in *ex parte* notices explicit references to data and arguments that are already reflected in the presenter's prior written filings. The requirement, however, that parties provide pinpoint cites to pages and paragraphs for the issue discussed in the oral presentation and the date, title, and proceedings of the presenter's prior written arguments or data would be both costly and administratively impractical. The transparency and disclosure gain that the Commission might realize by requiring pinpoint cites would be offset by delayed filing of notices or inadvertent and non prejudicial violations of the rule, particularly during Sunshine

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<sup>4</sup> *Ex Parte* NPRM at para.5.

<sup>5</sup> *Id.* at para.8.

Period, resulting from the added compliance burden of identifying pinpoint cites for inclusion in *ex parte* notices.

B. Mandatory Electronic Filing of Notices

The Commission notes that although most parties electronically file notifications of *ex parte* presentations in the Commission's Electronic Comment Filing System ("ECFS"), the rules do not currently require electronic filing. Therefore, the Commission proposes to amend the *ex parte* rules and codify the current practice of most filers.<sup>6</sup> In addition to mandatory electronic filing, the Commission proposes that *ex parte* notices be filed in currently acceptable formats (i.e. searchable .pdf, .doc, .ppt).<sup>7</sup> However, the Commission proposes to continue to allow filing on paper through the Secretary's office in those cases where a docket number has not been assigned to a proceeding.<sup>8</sup>

Sprint Nextel supports the Commission's proposal to require electronic filing of notices of *ex parte* presentations. Mandatory electronic filing of *ex parte* notices will reduce the burden to Commission staff gathering record materials and allow Commission staff, parties, and the general public easy and timely access to documents related to Commission proceedings online. As the Commission points out, the majority of *ex parte* notices filed today are filed electronically on the Commission's ECFS and are already available to Commission staff and the general public immediately upon filing. Making electronic filing mandatory will promote the Commission's goals while placing very little burden on parties.

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<sup>6</sup> *Ex Parte* NPRM at para.16.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The Commission's proposal is consistent with other Commission practices such as those referenced in Section 1.913 of the Commission's rules requiring electronic filing of most applications and related pleadings for licensing of Wireless Radio Services using the Commission's Universal Licensing System ("ULS").<sup>9</sup> The ULS has proven to be very successful in providing easy and timely access to Wireless Radio Services licensing proceedings and records.

The Commission's proposal is also consistent with the Commission's efforts to develop and deploy a transparent, easily accessible, data driven, efficient, cost effective and "green" online consolidated licensing system – a proposal Sprint Nextel has long supported.

C. Ex Parte Notices During the Sunshine Period

Section 1.1206(b) of the Commission's rules states that presentations allowed during the Sunshine Period require *ex parte* notices to be filed no later than the end of the next business day.<sup>10</sup> The Commission notes, however, that in those cases where an oral *ex parte* presentation is permitted during the Sunshine Period, it is very important that the notice summarizing the presentation be available quickly to the Commissioners, the staff and interested parties. The current rule allows as many as two working days to elapse from the time of the presentation until the filing of the summary. Further, if the notice is not filed electronically, it may be even longer before it is reflected online in the electronic docket. In light of this timing problem, the Commission proposes to require the electronic filing of *ex parte* notices summarizing oral *ex parte* presentations made during

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<sup>9</sup> 47 C.F.R. §1.913

<sup>10</sup> 47 C.F.R. §1.1206(b)

the Sunshine Period within four hours of the completion of the presentation, so the information is expeditiously available to the Commissioners, the staff, and other parties.<sup>11</sup>

Although mandatory electronic filing requirement for all *ex parte* notices filed during the Sunshine Period is reasonable, a requirement to file an *ex parte* notice within four hours of completion of a presentation will often prove impractical and overly burdensome. The Commission acknowledges that it may be difficult for some parties at times to meet this requirement due to multiple meetings with Commission staff, travel itineraries, or occasionally lack of access to a computer and the internet. Four hours is often insufficient time for even the most conscientious parties. As the Commission points out, multiple meetings and travel commitments make a four hour filing window extremely aggressive, particularly in cases where a presentation is scheduled first thing in the morning and the filer has additional meetings throughout the remainder of the day with various Commission staff. Accordingly, the likelihood of parties consistently being able to meet a four hour filing requirement is not promising.

The Commission should require the filing of an *ex parte* notice during the Sunshine Period within 24 hours of a presentation. Such a requirement would provide parties sufficient time to comply. For example, if a presenter has a meeting with Commission staff is at 10:00 a.m., the presenter's *ex parte* notice would be due by 10:00 a.m. the next business day. This period should accommodate constraints parties may have when they have multiple meetings with Commissioners and staff throughout the day as well as provide for travel time. Requiring *ex parte* notices to be filed within twenty four hours of the presentation furthers the Commission's goals of ensuring timely access

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<sup>11</sup> *Ex Parte Notice* at para. 20.

to *ex parte* filings while also providing parties a reasonable timeframe to file such notices. Further, if the Commission requires all *ex parte* notices during the Sunshine Period to be filed electronically, the Commission's concerns about delayed availability of *ex parte* notices would be minimized. Accordingly, Sprint believes that mandatory electronic filing within twenty four hours is both a sufficient and practical timeframe for parties to submit *ex parte* notices during the Sunshine Period.

D. Disclosure Statements

In the *Ex Parte* NPRM, the Commission asks for comment regarding its proposal to require parties to submit disclosure statements containing ownership and other information about the entity making an *ex parte* presentation or filing a pleading with the Commission.<sup>12</sup> According to the Commission, there are instances when a party filing a pleading or other document with the Commission or making an *ex parte* presentation may represent the interests of other entities, or the party's interest in the proceeding may otherwise be unclear.<sup>13</sup> The Commission asks whether the ability of the Commission and the public to evaluate the positions taken in Commission proceedings would be improved if parties provided more information about themselves and their interests in the proceedings through the filing of disclosure statements.<sup>14</sup>

In general, the filing of disclosure statements is not necessary to aid the Commission and public in evaluating arguments in Commission proceedings. Parties typically adequately identify themselves and their interests and any further information is

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<sup>12</sup> *Ex Parte* Notice at para. 27.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

required is just a click away on the internet. Moreover, too burdensome a disclosure statement may discourage parties from participating in Commission proceedings.

Nevertheless, should the Commission decide to require disclosure statements to be filed in association with *ex parte* notices or other documents, the Commission should permit parties to refer to their most recent publicly filed FCC Form 602 or other publicly filed FCC ownership disclosure form. The Commission could not only enhance the accessibility of ownership information that it already collects, but also limit the burden it imposes on those parties that participate in the rulemaking process by developing a means of linking to the FCC's Form 602 submission that the Commission maintains for the party filing an *ex parte*.

As the Commission points out, ownership information is publicly available for licensees of wireless services on the Commission's ULS database. This information can be found on the FCC Form 602. Other services have similar ownership disclosure requirements and forms available to the public and the Commission. For example, commercial broadcasting licensees file ownership information on FCC Form 323. Permitting parties to submit a simple statement in the *ex parte* notice referencing the filers most recently filed FCC Form 602, 323, or similar FCC form ("Ownership Disclosure Form") should suffice to address the Commission's concerns. For example, Sprint Nextel currently has an FCC Form 602 on file before the Commission and believes referencing the file number in a certification statement in each *ex parte* filing would provide sufficient information to the general public as well as Commission staff. Moreover, the Commission should clarify that any disclosure statement requirement that the Commission may adopt in the *ex parte* notice context does not obligate the disclosing

party to provide updated ownership information beyond that already required in association with the Commission's rules for existing Ownership Disclosure Forms. This approach keeps the size and burden of the *ex parte* notifications to a minimum while addressing the Commission's concerns.

## II. Procedures NPRM Comments

In the Procedures NPRM, the Commission seeks comment on proposals to increase efficiency, modernize its procedures, and enhance the openness and transparency of Commission proceedings. First the Commission proposes to delegate authority to the staff to dismiss or deny defective or repetitive petitions filed with the Commission for reconsideration of Commission decisions.<sup>15</sup> The Commission also proposes to clarify the rule relating to reconsideration on its own motion within 30 days to make clear that the Commission may modify a decision, not merely set it aside or vacate it.<sup>16</sup> Second the Commission seeks to expand the use of docketed proceedings in conjunction with increased use of electronic filing. Sprint fully supports both of these Commission proposals.<sup>17</sup>

Sprint supports the Commission's proposal to authorize the staff to dismiss or deny on delegated authority petitions for reconsideration that are substantively and procedurally defective, untimely, fail to identify any material error, omission, or reason warranting reconsideration, rely on arguments that have been fully considered and rejected, or otherwise do not warrant action by the full Commission. This rule will encourage rapid resolution of defective or repetitive petitions for reconsideration and also discourage the

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<sup>15</sup> Procedures NPRM at para. 4.

<sup>16</sup> *Id.* at para. 8

<sup>17</sup> *Id.* at para. 9.

filing of frivolous petitions, thus reducing the workload on the Commission and its staff and improving the Commission's speed of disposal. The criteria governing petitions for reconsideration that would be subject to this approach strike the appropriate balance between ensuring that parties with genuine grievances have the opportunity to be heard by the Commission with the Commission's need to efficiently dispose of defective petitions or petitions that do not raise issues warranting reconsideration.

Sprint also supports the Commission's proposal to expand the use of the Commission's formal docketing process along with the maintenance of records in ECFS. The use of formal docketing in conjunction with record maintenance in ECFS should be extended to all Commission proceedings not already subject to electronic filing and record maintenance to the maximum extent technically and practically feasible. The use of docketing and ECFS greatly enhances the openness, transparency, and accuracy of the Commission's decision making process by providing all parties with reliable access to an accurate docket anywhere in the world an internet connection is available. In addition, this unfettered access to the record in Commission proceedings greatly enhances the likelihood of public participation in Commission proceedings.

Respectfully submitted,

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Dated: May 10, 2010