

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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



I. Introduction and Summary.

The American Cable Association (“ACA”) submits these Comments in response to the Notices of Proposed Rulemaking seeking comment on proposed amendments to the Commission’s *ex parte*, procedural, and other rules.¹

ACA commends the Commission for initiating rulemakings that seek to “make the Commission’s decisionmaking processes more open, transparent, and effective,”² and intended to “increase efficiency and modernize [the Commission’s] procedures,

¹ *In the Matter of Amendment of the Commission’s Ex Parte Rules and Other Procedural Rules*, Notice of Proposed Rulemaking, GC Docket No. 10-43 (rel. Feb. 22, 2010) (“*Ex Parte NPRM*”); *In the Matter of 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 (rel. Feb. 22, 2010) (“*Practice and Procedure NPRM*”).

² *Ex Parte NPRM*, ¶ 1.

enhance the openness and transparency of Commission proceedings, and clarify certain procedural rules.”³ In order to better ensure openness, transparency, and increased efficiency in Commission proceedings, ACA recommends that the Commission amend its *ex parte* and procedural rules by:

- Providing parties two business days to submit *ex parte* notices after conducting an oral *ex parte* presentation, except the agency should maintain the one business day requirement in rulemaking proceedings after the reply comment deadline expires;
- Narrowing the Sunshine period exception to prohibit an outside party from soliciting a request from staff for an *ex parte* presentation “for the clarification or adduction of evidence, or for the resolution of issues”; and
- Generally requiring electronic filing of written *ex parte* presentations in docketed proceedings, as well as enhancing the role of ECFS in Commission proceedings.

American Cable Association. ACA represents more than 900 small and medium-sized cable companies serving smaller markets and rural areas throughout the United States. ACA’s membership encompasses a wide variety of businesses – family-owned companies serving small towns and villages, multiple system operators serving predominantly rural markets in several states, and hundreds of companies in between. Together, these companies serve more than 7 million households and businesses.

- II. The FCC should provide parties two business days to submit *ex parte* notices after conducting an oral *ex parte* presentation, except the agency should maintain the one business day requirement in rulemaking proceedings after the reply comment deadline expires.**

³ *Practice and Procedure NPRM*, ¶ 1.

The Commission seeks comment on whether parties should have two business days after making an oral *ex parte* presentation to make a filing.⁴ ACA supports a limited use of the two business day proposal because permitting parties more time to file *ex parte* notices will assist the Commission in developing a complete and accurate record.

At the same time, the Commission must preserve the one business day requirement in rulemaking proceedings once the deadline for submitting reply comments expires. Because the Commission may adopt an order without notification anytime after the reply comment deadline passes, it is critical during this time – particularly in the weeks prior to a Commission vote on a rulemaking – that all parties have timely notice of any oral presentation to Commissioners or Commission staff.⁵ A two business day deadline during this window may increase a party’s ability to record one side of an argument without allowing responses on the other side. Maintaining the one business day rule after the reply period ends will give *ex parte* filings the greatest possible exposure. This will ensure the Commission’s decisionmaking processes remain open, transparent, and effective.

III. The Commission should narrow the Sunshine period exception to prohibit an outside party from soliciting a request from staff for an *ex parte* presentation “for the clarification or adduction of evidence, or for the resolution of issues.”

⁴ *Ex Parte NPRM*, ¶ 10 (“Given that the proposed rule would generally require more detailed *ex parte* notices than the current rule does, we seek comment on whether parties should (except with respect to exempt presentations during the Sunshine period as discussed below) have two business days after making an oral *ex parte* presentation to make a filing rather than the current one business day.”).

⁵ While the same concerns could be raised with regard to Notices of Inquiry and Petitions for Rulemaking, ACA believes that rulemaking proceedings require a more open and transparent process given that Commission action on such items results in changes to Commission regulations.

The Commission also seeks comment on whether the current exceptions to the Sunshine period restrictions on *ex parte* presentations should be modified.⁶ In particular, the Commission focuses on the exception to the Sunshine period prohibition for presentations “requested by (or made with the advance approval of) the Commission or staff for the clarification or adduction of evidence, or for resolution of issues, including possible settlement.”⁷ The Commission seeks comment on whether this exception ought to be narrowed to prohibit an outside party from soliciting a request from staff for an *ex parte* presentation “for the clarification or adduction of evidence, or for the resolution of issues.”⁸

ACA shares the Commission’s concern that parties could abuse the exception by “shor[ing] up the record on one side of an argument without allowing responses on the other side.”⁹ Parties have ample time to comment on proceedings and discuss issues with Commission staff before any rule or regulation becomes effective. The potential for abuse far outweighs the benefit of an exception to the Sunshine rules that would allow outside parties to solicit requests from Commission staff for an *ex parte* presentation. ACA therefore supports narrowing the exception to prohibit an outside party from soliciting a request from Commission staff for an *ex parte* presentation “for the

⁶ *Ex Parte NPRM*, ¶ 23.

⁷ *Ex Parte NPRM*, ¶ 23; 47 C.F.R. §§ 1.1203(a)(1); 1.204(a)(10).

⁸ *Ex Parte NPRM*, ¶ 23; 47 C.F.R. §§ 1.1203(a)(1); 1.204(a)(10).

⁹ *Ex Parte NPRM*, ¶ 23.

clarification or adduction of evidence, or for the resolution of issues” during the Sunshine period.

Moreover, if an *ex parte* presentation is made within the Sunshine period and falls within an exception – including if initiated by Commission staff – such presentation must be documented via ECFS on the same business day.

IV. ACA supports the Commission’s proposal to generally require that written *ex parte* presentations in docketed proceedings be filed electronically, as well as the Commission’s proposal to enhance the role of ECFS in Commission proceedings.

The Commission proposes to amend its *ex parte* rules generally to require that written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations in docketed proceedings be filed electronically on a Commission electronic comment filing system.¹⁰ The Commission also seeks comment on the efficacy of utilizing electronic filing of pleadings through ECFS in a broader array of Commission proceedings.¹¹ ACA fully supports both proposals.

As the Commission notes, “When filings are made in paper format only and are not included in an electronic system (such as ECFS) that permits search and query functions, interested persons may find it difficult to follow and participate in our proceedings.”¹² Moreover, ACA agrees with the Commission’s assessment that

¹⁰ *Ex Parte NPRM*, ¶ 16.

¹¹ *Practice and Procedure NPRM*, ¶ 13.

¹² *Practice and Procedure NPRM*, ¶ 13.

“electronic filing through our enhanced ECFS or other electronic filing systems such as ULS better serves the public interest than a paper-only filing process.”¹³

ACA supports the Commission’s proposal to amend its *ex parte* rules generally to require that written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations in docketed proceedings be filed electronically on a Commission electronic comment filing system. The ability to easily access Commission filings through searchable proceedings and RSS feeds is not only efficient, but it also promotes the Commission’s goal of greater openness and transparency. To increase the accessibility and timeliness of filings, the Commission should amend its *ex parte* rules generally to ensure that written *ex parte* presentations in docketed proceedings are filed electronically through ECFS.

ACA supports the electronic filing of pleadings through ECFS in other non-docketed Commission proceedings as well. The benefits to electronic filing are the same in both docketed and non-docketed proceedings. The Commission should seek to expand the use of electronic filing to non-docketed proceedings (*e.g.*, Cable Special Relief (CSR) Petitions). While some Commission proceedings may require parties to submit confidential or proprietary information that cannot be disclosed, the Commission should require that parties electronically submit the redacted versions of these filings in instances where confidentiality is necessary. Again, the emphasis is on openness and transparency.

¹³ *Practice and Procedure NPRM*, ¶ 13.

V. Conclusion.

ACA commends the Commission for initiating rulemakings that seek to improve openness and transparency in Commission proceedings, and increase efficiency at the Commission. ACA supports those efforts, and asks that the Commission adopt its recommendations.

Respectfully submitted,

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