

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

In the Matter of)	
)	
Amendment of the Commission’s <i>Ex Parte</i> Rules and Other Procedural Rules)	GC Docket No. 10-43
)	
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
)	

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY
CONSUMER ADVOCATES**

I. INTRODUCTION

On February 22, 2010, the Federal Communications Commission (“Commission” or “FCC”) issued a Notice of Proposed Rulemaking in GC Docket No. 1-43 “to improve the transparency and effectiveness of the Commission’s decisionmaking by reforming [its] *ex parte* rules.” (“*Ex Parte NPRM*”).¹ On that same date, the Commission issued a Notice of Proposed Rulemaking in GC Docket No. 10-44 proposing changes to the Commission’s procedural rules “intended to increase efficiency and modernize our procedures, enhance the openness and transparency of Commission proceedings, and clarify certain procedural rules....” (“*Rules NPRM*”).²

The National Association of State Utility Consumer Advocates (“NASUCA”) filed comments on the *Ex Parte NPRM*, as did a number of other parties. Some parties, like NASUCA, filed comments directed only to the *Ex Parte NPRM*,³ while other parties combined

¹ FCC 10-31 (rel. February 22, 2010), ¶ 1.

² FCC 10-32 (rel. February 22, 2010), ¶ 1.

³ AT&T Inc. (“AT&T”); Independent Telephone & Telecommunications Alliance (“ITTA”); Marcus Spectrum Solutions LLC (“Marcus”); Media Access Project (“MAP”); National Association of Telecommunications Officers and Advisors (“NATOA”); National Telecommunications Cooperative Association (“NTCA”); Public Knowledge and Consumer Federation of America (“PK/CFA”); Qwest Corporation (“Qwest”)

comments on the two NPRMs.⁴ And a few parties filed comments directed only to the *Rules NPRM*.⁵ NASUCA replies here to certain of the comments, particularly those taking unreasonable positions.

In the initial comments, NASUCA supported most of the proposals in the *Ex Parte NPRM*, but suggested some changes.⁶ Similarly, most of the proposals in both NPRMs garnered support from most of the commenters.

These reply comments first respond to comments on the key issues from the *Ex Parte NPRM*. Then a few of the issues from the *Rules NPRM* are addressed.

II. THE NEED FOR FILING OF DETAILED DESCRIPTIONS OF ALL ORAL *EX PARTE* PRESENTATIONS

Interestingly, comments opposing the filing of detailed summaries of prior written data or arguments were filed by AT&T.⁷ As one of the most consistent frequenters of the Commission's hallways, AT&T clearly would like to put the burden on those with fewer resources to ferret out the substance of its discussions with Commissioners and staff. AT&T's assertions that such a rule would be "counterproductive"⁸ ring hollow.

NASUCA strongly disagrees with ITTA that "many parties are extra-judicious in their compliance with existing regulations."⁹ The burden should not be on other parties to locate filings submitted previously by the *ex parte* filer.¹⁰ That is why Sprint Nextel's objection to the

⁴ American Cable Association ("ACA"); Pierre de Vries ("de Vries"); Sprint Nextel Corporation ("Sprint Nextel"); Verizon and Verizon Wireless ("Verizon")

⁵ AT&T; MAP; Qwest; TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network ("MASN").

⁶ See, generally, NASUCA Comments.

⁷ AT&T *Ex Parte NPRM* Comments at 1.

⁸ *Id.*

⁹ ITTA Comments at 4.

¹⁰ *Id.*

requirement 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”¹¹ misses the point. Indeed, if a party is not familiar enough with its prior filings to cite chapter and verse of those filings, the communications with Commissioners and staff would not be worth much.

MAP notes that “many people appear to believe that discussions in social settings and telephone conversations need not be disclosed...”¹² NASUCA agrees that “the Commission should forcefully declare that all communications must be disclosed.”¹³

ACA supports extending the filing deadline for *ex partes* to two days,¹⁴ but does not discuss the reason why the extension is needed: because of the new requirement for a more detailed description of the oral communication. ACA does note that, because there is no requirement for public notice of pending Commission decision in rulemaking proceedings (and thus no Sunshine period), notices of *ex partes* filed after the reply comment date should be filed within one business day of the oral communication.¹⁵ There is a conflict here, but on balance NASUCA would support the general extension and trust that the Commission will not “rush to judgment” without giving stakeholders the opportunity to respond to significant new information.

¹¹ Sprint Nextel Comments at 3.

¹² MAP *Ex Parte NPRM* Comments at 1.

¹³ *Id.* at 1-2.

¹⁴ ACA Comments at 3.

¹⁵ ACA Comments at 3.

III. REQUIREMENT FOR ELECTRONIC FILING

NASUCA supports the proposals of de Vries to improve the transparency and information content of electronic filings.¹⁶ In particular, the posting of digital audio recordings of *ex parte* meetings¹⁷ would help to ensure the propriety of meetings with Commissioners and staff.

NASUCA agrees with Marcus and NTCA that electronic filings of notices of oral communications should include a notation of the time of the meeting, with late filings automatically flagged for enforcement.¹⁸ An inaccurate statement of the time of the meeting should subject the party to sanction.

IV. THE NEED FOR DISCLOSURE OF PARTY INFORMATION

AT&T states that disclosure statements are unnecessary.¹⁹ One wonders why AT&T is so solicitous of the interests of other parties; the mere announcement that a presentation was made by AT&T should be enough to identify its interests. And even though “[i]n the vast majority of instances, the Commission is well aware of the interests of parties participating in Commission proceedings, and to the extent it is not, it can seek additional information from those parties...”²⁰ the key here is not the knowledge of the Commission: It is the interest of the

¹⁶ See De Vries Comments at 4-12 and summary list at 13.

¹⁷ Id. at 10-11; see also MAP *Ex Parte NPRM* Comments at 2. PK/CFA propose video recordings. PK/CFA Comments at 5-6.

¹⁸ Marcus Comments at [3-4]; NTCA Comments at 8-9.

¹⁹ AT&T *Ex Parte NPRM* Comments at 3.

²⁰ Id.; see also ITTA Comments at 7; Qwest *Ex Parte NPRM* Comments at 8. AT&T’s concern about repetitive and voluminous disclosures (AT&T *Ex Parte NPRM* Comments at 5) is addressed by Verizon’s proposal (Verizon Comments at 4-5) that a filer be able to reference back to a prior disclosure made within the past year. See also Sprint Nextel Comments at 8.

public in knowing who has been providing information in Commission proceedings.²¹ And again, the burden should not be on others to perform such research, even when the information “is just a click away on the internet.”²² Sometimes all the clicking in the world will not reveal the truth.

V. SUNSHINE PERIOD ISSUES

Verizon opposes allowing parties to respond to *ex parte* notices filed during the Sunshine period.²³ Verizon asserts that this would violate the “period of repose.”²⁴ Verizon misses the point that the “quiet period” has already been broken by the communication memorialized in a party’s *ex parte* notices; it is fundamental fairness to allow others to respond.

ACA and NTCA assert that if an *ex parte* presentation is made within the Sunshine period, the notice must be filed on the same business day.²⁵ NASUCA submits that the Commission’s suggestion that the filing be made “within four hours of the completion of the presentation”²⁶ is more realistic and correct. The burden on the party that made the oral communication during the Sunshine period²⁷ is outweighed by the need to allow others to timely respond. As NATOA states,

Electronic filing makes filing quick and easy. Presenters do not even have to wait until they return to their office to submit a filing due to the ubiquitous availability of public internet connections at hotels, cafes, airports, and even the Federal

²¹ AT&T’s statement that “[b]ecause there is no connection between the information provided in disclosure statements and the validity of a point of view or the strength of an argument, it does not follow that requiring the former will improve the evaluation of the latter” (AT&T Comments at 5) ignores political reality.

²² Sprint Nextel Comments at 8.

²³ Verizon Comments at 4.

²⁴ *Id.*

²⁵ ACA Comments at 5; NTCA Comments at 8. Qwest says that eight hours should be allowed. Qwest *Ex Parte NPRM* Comments at 6.

²⁶ *Ex Parte NPRM*, ¶ 20.

²⁷ NTCA Comments at 8; Sprint Nextel Comments at 6.

Communications Commission building itself. Furthermore, most parties will know the contents of their presentation prior to the meeting in the vast majority of cases. Thus, any burden can usually be minimized by drafting the *ex parte* letter prior to the meeting. Even if the meeting addressed issues that were not anticipated, the draft could likely be updated with minimal burden. The minor burden of having to submit a filing within four hours is greatly outweighed by the benefits to transparency and fairness in the final hours a proceeding is open.²⁸

ITTA and Qwest oppose the proposal to prohibit parties from soliciting requests for oral communications during the Sunshine period.²⁹ This opposition has it backwards: Rather than “supplanting unnecessarily Staff’s ability to discern the appropriate approach in any particular proceeding...”³⁰ the proposal rests the entire responsibility for initiating oral communications on Commission staff, rather than on the parties.

VI. THE NEED FOR ENFORCEMENT

Some commenters dispute the need for the rule changes, arguing that enforcement of the current rules will adequately address the Commission’s concerns.³¹ As NASUCA stated, both new rules and increased enforcement are needed.³² This is especially true given the apparent total lack of real enforcement of the current rules.³³ NASUCA agrees with Marcus that a ban on oral *ex parte* communications by the violating party would be an effective deterrent.³⁴ It would also be a punishment “fitting the crime.”

NASUCA agrees with MAP that Commission staff should play a role in enforcing the rules. This would include “flagging” notices that are “plainly deficient” and notifying the

²⁸ NATOA Comments at 4-5.

²⁹ ITTA Comments at 5-6; Qwest *Ex Parte NPRM* Comments at 6-7.

³⁰ *Id.* at 6.

³¹ See, e.g., ITTA Comments at 2-3; Qwest *Ex Parte NPRM* Comments at 3.

³² NASUCA Comments at 9; see also NTCA Comments at 6.

³³ Marcus Comments at [2-3, 4]; see also PK/CFA Comments at 3.

³⁴ Marcus Comments at [5]; see also PK/CFA Comments at 9.

filers.³⁵ It would also involve reporting instances of non-cooperation to the General Counsel for further enforcement.³⁶

VII. REPLY COMMENTS ON THE COMMISSION'S PROCEDURAL RULES

NASUCA agrees with AT&T, Qwest and Verizon that before the Commission staff closes a docket, a Public Notice should be issued identifying the docket and providing for public comment on the closure.³⁷ This should alleviate some of AT&T's concerns about the closure of old, inactive dockets in which parties retain a substantial interest.³⁸ And NASUCA agrees with AT&T that "terminations based on dormancy" should constitute an effective denial and final determination of a petition in that proceeding.³⁹ NASUCA also notes that the use of a Public Notice for such a termination is much more preferable than the mere posting on the Commission's website.⁴⁰

NASUCA supports Verizon's proposal that the time for filing oppositions to Petitions for Declaratory Ruling should not be governed by the default ten-day rule found in Commission Rule 1.45(b).⁴¹ It is appropriate for such Petitions to be treated like rulemakings, being docketed with filing dates specified in a Public Notice.⁴²

Finally, NASUCA would suggest another amendment to the Commission's rules: the

³⁵ MAP *Ex Parte NPRM* Comments at 2.

³⁶ *Id.*

³⁷ AT&T Rules Comments at 2-3; Qwest Rules Comments at 4; Verizon Comments at 7; all citing *Rules NPRM*, ¶ 19. NASUCA notes that its agreement with these three carriers is a rare occurrence indeed.

³⁸ AT&T Rules Comments at 3-5.

³⁹ *Id.* at 5.

⁴⁰ Qwest Rules Comments at 4.

⁴¹ Verizon Comments at 6.

⁴² *Id.*

establishment of a time limit on the pendency of Petitions for Reconsideration under Commission Rules 1.106 and 1.429. Far too often such Petitions are allowed to languish, seemingly as a means to delay or prevent appellate review.

VIII. CONCLUSION

NASUCA appreciates the Commission's consideration of its views on these important matters. The proposals made by NASUCA in the initial comments and supported in these reply comments should be adopted.

Respectfully submitted,

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