such persons. That person may file a response within ten business days after
the application for review is filed. If the records are made available for re-
view, the person who submitted them to the Commission will be afforded ten
business days after the date of the written ruling to seek a judicial stay.
See paragraph (i) of this section. The first day to be counted in computing
the time period for filing the application for review or seeking a judicial
stay is the day after the date of the written ruling. 

NOTE TO PARAGRAPHS (i) AND (j): The General
Counsel may review applications for re-
view with the custodian of records and at-
tempt to informally resolve outstanding
issues with the consent of the requester. For
general procedures relating to applications
for review, see §1.115 of this chapter.

(k)(1)(i) The Commission will make
every effort to act on an application
for review of an action on a request for
inspection of records within twenty
business days after it is filed. In the fol-
lowing circumstances and to the ex-
tent time has not been extended under
paragraphs (g)(1)(i), (ii), or (iii) of
§0.461(g) of this section, the Commis-
sion may extend the time for acting on
the application for review up to ten
business days. (The total period of ex-
tensions taken under this paragraph
and under paragraph (g) of this section
without the consent of the person who
submitted the request shall not exceed
ten business days.):
(A) It is necessary to search for and
collect the requested records from field
facilities or other establishments that
are separate from the office processing
the request;
(B) It is necessary to search for, col-
lect and appropriately examine a volu-
minal amount of separate and dist-
inct records which are demanded in a
single request; or
(C) It is necessary to consult with an-
other agency having a substantial in-
terest in the determination of the re-
quest or among two or more compo-
ents of the Commission having sub-
stantial subject matter interest there-
in.
(ii) If these circumstances are not
present, the person who made the re-
quest may be asked to consent to an
extension or further extension. If the
requester or person who made the re-
qust agrees to an extension, the Gen-
eral Counsel will confirm the agree-
ment in a letter specifying the length
of the agreed-upon extension. If the re-
qustee or person who made the re-
qust does not agree to an extension,
the Commission will continue to search
for and/or assess the records and will
advise the person who made the re-
qust of further developments; but that
person may file a complaint in an ap-
propriate United States district court.

(l) The Commission may at its dis-
ccretion or upon request consolidate for
consideration related applications for
review filed under §0.461(i) or §0.461(j).

(m) Staff orders and letters ruling on
requests for inspection are signed by
the official (or officials) who give final
approval of their contents. Decisions of
the Commission ruling on applications
for review will set forth the names of
the Commissioners participating in the
decision.

(n) Records shall be inspected within
seven days after notice is given that
they have been located and are avail-
able for inspection. After that period,
they will be returned to storage, and
additional charges may be imposed for
again producing them.

[74 FR 14078, Mar. 30, 2009, as amended at 76
FR 24389, May 2, 2011]

§ 0.463 Disclosure of Commission
records and information in legal
proceedings in which the Commis-
sion is a non-party.

(a) This section sets forth procedures
to be followed with respect to the pro-
duction or disclosure of any material
within the custody and control of the
Commission, any information relating
to such material, or any information
acquired by any person while employed by the Commission as part of the person’s official duties or because of the person’s official status.

(b) In the event that a demand is made by a court or other competent authority outside the Commission for the production of records or testimony (e.g., a subpoena, order, or other demand), the General Counsel shall promptly be advised of such demand, the nature of the records or testimony sought, and all other relevant facts and circumstances. The General Counsel, in consultation with the Managing Director, will thereupon issue such instructions as he or she may deem advisable consistent with this subpart.

(c) A party in a court or administrative legal proceeding in which the Commission is a non-party who wishes to obtain records or testimony from the Commission shall submit a written request to the General Counsel. Such request must be accompanied by a statement setting forth the nature of the proceeding (including any relevant supporting documentation, e.g., a copy of the Complaint), the relevance of the records or testimony to the proceeding (including a proffer concerning the anticipated scope and duration of the testimony), a showing that other evidence reasonably suited to the requester’s needs is not available from any other source (including a request submitted pursuant to §0.460 or §0.461 of the Commission’s rules), and any other information that may be relevant to the Commission’s consideration of the request for records or testimony. The purpose of the foregoing requirements is to assist the General Counsel in making an informed decision regarding whether the production of records or the testimony should be authorized.

(d) In deciding whether to authorize the release of records or to permit the testimony of present or former Commission personnel, the General Counsel, in consultation with the Managing Director, shall consider the following factors:

(1) Whether the request or demand would involve the Commission in issues or controversies unrelated to the Commission’s mission;

(2) Whether the request or demand is unduly burdensome;

(3) Whether the time and money of the Commission and/or the United States would be used for private purposes;

(4) The extent to which the time of employees for conducting official business would be compromised;

(5) Whether the public might misconstrue variances between personal opinions of employees and Commission policy;

(6) Whether the request or demand demonstrates that the records or testimony sought are relevant and material to the underlying proceeding, unavailable from other sources, and whether the request is reasonable in its scope;

(7) Whether, if the request or demand were granted, the number of similar requests would have a cumulative effect on the expenditure of Commission resources;

(8) Whether the requestor has agreed to pay search and review fees as set forth in §0.467 of this subpart;

(9) Whether disclosure of the records or the testimony sought would otherwise be inappropriate under the circumstances; and

(10) Any other factor that is appropriate.

(e) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors exist:

(1) Disclosure of the records or the testimony would violate a statute, Executive Order, rule, or regulation;

(2) The integrity of the administrative and deliberative processes of the Commission would be compromised;

(3) Disclosure of the records or the testimony would not be appropriate under the rules of procedure governing the case or matter in which the demand arose;

(4) Disclosure of the records, including release in camera, or the testimony, is not appropriate or required under the relevant substantive law concerning privilege;

(5) Disclosure of the records, except when in camera and necessary to assert a claim of privilege, or of the testimony, would reveal information properly classified or other matters exempt from unrestricted disclosure; or
(6) Disclosure of the records or the testimony could interfere with ongoing Commission enforcement proceedings or other legal or administrative proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

(f) The General Counsel, following consultation with the Managing Director and any relevant Commission Bureau or Office, is authorized to approve non-privileged testimony by a present or former employee of the Commission or the production of non-privileged records in response to a valid demand issued by competent legal authority, or a request for records or testimony received under this section, and to assert governmental privileges on behalf of the Commission in litigation that may be associated with any such demand or request.

(g) Any employee or former employee of the Commission who receives a demand for records of the Commission or testimony regarding the records or activities of the Commission shall promptly notify the General Counsel so that the General Counsel may take appropriate steps to protect the Commission’s rights.

(Secs. 4(i), 303(r), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); 5 U.S.C. 301; 47 CFR 0.231(d))

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) The Commission awards a contract to a commercial duplication firm to make copies of Commission records and offer them for sale to the public. In addition to the charge for copying, the contractor may charge a search fee for locating and retrieving the requested documents from the Commission’s files.

NOTE TO PARAGRAPH (a): The name, address, telephone number, and schedule of fees for the current copy contractor are published at the time of contract award of renewal in a public notice and periodically thereafter. Current information is available at http://www.fcc.gov/foia and http://www.fcc.gov/cgb. Questions regarding this information should be directed to the Reference Information Center of the Consumer and Governmental Affairs Bureau at 202–418–0270.

(b)(1) Records routinely available for public inspection under §§0.453 and 0.455 are available to the public through the Commission’s current copy contractor. Section 0.461 does not apply to such records.

(2) Audio or video recordings or transcripts of Commission proceedings are available to the public through the Commission’s current copy contractor. In some cases, only some of these formats may be available.

(c)(1) Contractual arrangements which have been entered into with commercial firms, as described in this section, do not in any way limit the right of the public to inspect Commission records or to retrieve whatever information may be desired. Coin-operated and debit card copy machines are available for use by the public.

(2) The Commission has reserved the right to make copies of its records for its own use or for the use of other agencies of the U.S. Government. When it serves the regulatory or financial interests of the U.S. Government, the Commission will make and furnish copies of its records free of charge. In other circumstances, however, if it should be necessary for the Commission to make and furnish copies of its records for the use of others, the fee for this service shall be ten cents ($0.10) per page or $5 per computer disk in addition to charges for staff time as provided in §0.467. For copies prepared with other media, such as computer tapes, microfiche, videotape, the charge will be the actual direct cost including operator time. Requests for copying should be accompanied by a statement specifying the maximum copying fee the person making the request is prepared to pay. If the Commission estimates that copying charges are likely to exceed the greater of $25 or the amount which the requester has indicated that he/she is prepared to pay, then it shall notify the requester of the estimated amount of fees. Such a notice shall offer the requester the opportunity to confer with Commission personnel with the object of revising or clarifying the request.

NOTE TO PARAGRAPH (c)(2): The criterion considered in acting on a waiver request is