

§ 1.1204

47 CFR Ch. I (10–1–20 Edition)

(i) This exemption does not apply to restricted proceedings designated for hearing;

(ii) In restricted proceedings not designated for hearing, any new written information elicited from such request or a summary of any new oral information elicited from such request shall promptly be served by the person making the presentation on the other parties to the proceeding. Information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section. The Commission or its staff may waive the service requirement if service would be too burdensome because the parties are numerous or because the materials relating to such presentation are voluminous. If the service requirement is waived, copies of the presentation or summary shall be placed in the record of the proceeding and the Commission or its staff shall issue a public notice which states that copies of the presentation or summary are available for inspection. The Commission or its staff may determine that service or public notice would interfere with the effective conduct of an investigation and dispense with the service and public notice requirements;

(iii) If the presentation is made in a proceeding subject to permit-but-disclose requirements, disclosure of any new written information elicited from such request or a summary of any new oral information elicited from such request must be made in accordance with the requirements of § 1.1206(b), provided, however, that the Commission or its staff may determine that disclosure would interfere with the effective conduct of an investigation and dispense with the disclosure requirement. As in paragraph (a)(10)(ii) of this section, information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section;

NOTE 2 TO PARAGRAPH (a): If the Commission or its staff dispenses with the service or notice requirement to avoid interference with an investigation, a determination will be made in the discretion of the Commission

or its staff as to when and how disclosure should be made if necessary. See *Amendment of Subpart H, Part I*, 2 FCC Red 6053, 6054 ¶¶ 10–14 (1987).

(iv) If the presentation is made in a proceeding subject to the Sunshine period prohibition, disclosure must be made in accordance with the requirements of § 1.1206(b) or by other adequate means of notice that the Commission deems appropriate;

(v) In situations where new information regarding the merits is disclosed during settlement discussions, and the Commission or staff intends that the product of the settlement discussions will be disclosed to the other parties or the public for comment before any action is taken, the Commission or staff in its discretion may defer disclosure of such new information until comment is sought on the settlement proposal or the settlement discussions are terminated.

(11) The presentation is an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay. A detailed summary of the presentation shall promptly be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement.

(12) The presentation is between Commission staff and:

(i) The administrator of the interstate telecommunications relay services fund relating to administration of the telecommunications relay services fund pursuant to 47 U.S.C. 225;

(ii) The North American Numbering Plan Administrator or the North American Numbering Plan Billing and Collection Agent relating to the administration of the North American Numbering Plan pursuant to 47 U.S.C. 251(e);

(iii) The Universal Service Administrative Company relating to the administration of universal service support mechanisms pursuant to 47 U.S.C. 254; or

Federal Communications Commission

§ 1.1206

(iv) The Number Portability Administrator relating to the administration of local number portability pursuant to 47 U.S.C. 251(b)(2) and (e), provided that the relevant administrator has not filed comments or otherwise participated as a party in the proceeding;

(v) The TRS Numbering Administrator relating to the administration of the TRS numbering directory pursuant to 47 U.S.C. 225 and 47 U.S.C. 251(e); or

(vi) The Pooling Administrator relating to the administration of thousands-block number pooling pursuant to 47 U.S.C. 251(e).

(b) *Exempt proceedings.* Unless otherwise provided by the Commission or the staff pursuant to §1.1200(a), *ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed with respect to the following proceedings, which are referred to as “exempt” proceedings:

(1) A notice of inquiry proceeding;

(2) A petition for rulemaking, except for a petition requesting the allotment of a broadcast channel (see also §1.1206(a)(1)), or other request that the Commission modify its rules, issue a policy statement or issue an interpretive rule, or establish a Joint Board;

(3) A tariff proceeding (including directly associated waiver requests or requests for special permission) prior to it being set for investigation (see also §1.1206(a)(4));

(4) A proceeding relating to prescription of common carrier depreciation rates under section 220(b) of the Communications Act prior to release of a public notice of specific proposed depreciation rates (see also §1.1206(a)(9));

(5) An informal complaint proceeding under 47 U.S.C. 208 and §1.717 of this chapter or 47 U.S.C. 255 and either §§6.17 or 7.17 of this chapter; and

(6) A complaint against a cable operator regarding its rates that is not filed on the standard complaint form required by §76.951 of this chapter (FCC Form 329).

NOTES 1-3 TO PARAGRAPH (b): [Reserved]

NOTE 4 TO PARAGRAPH (b): In the case of petitions for rulemaking that seek Commission preemption of state or local regulatory authority, the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption.

Service should be made on those bodies within the state or local governments that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the *ex parte* rules unless the Commission determines that the matter should be entertained by making it part of the record under §1.1212(d) and the parties are so informed.

[62 FR 15855, Apr. 3, 1997, as amended at 64 FR 63251, Nov. 19, 1999; 64 FR 68948, Dec. 9, 1999; 76 FR 24381, May 2, 2011]

NON-RESTRICTED PROCEEDINGS

§ 1.1206 Permit-but-disclose proceedings.

(a) Unless otherwise provided by the Commission or the staff pursuant to §1.1200(a), until the proceeding is no longer subject to administrative reconsideration or review or to judicial review, *ex parte* presentations (other than *ex parte* presentations exempt under §1.1204(a)) to or from Commission decision-making personnel are permissible in the following proceedings, which are referred to as permit-but-disclose proceedings, provided that *ex parte* presentations to Commission decision-making personnel are disclosed pursuant to paragraph (b) of this section:

NOTE 1 TO PARAGRAPH (a): In the case of petitions for declaratory ruling that seek Commission preemption of state or local regulatory authority and petitions for relief under 47 U.S.C. 332(c)(7)(B)(v), the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. Service should be made on those bodies within the state or local governments that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the *ex parte* rules unless the Commission determines that the matter should be entertained by making it part of the record under §1.1212(d) and the parties are so informed.

(1) An informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act other than a proceeding for the allotment of a broadcast channel, upon release of a Notice of Proposed Rulemaking (see also §1.1204(b)(2));

§ 1.1206

47 CFR Ch. I (10–1–20 Edition)

(2) A proceeding involving a rule change, policy statement or interpretive rule adopted without a Notice of Proposed Rule Making upon release of the order adopting the rule change, policy statement or interpretive rule;

(3) A declaratory ruling proceeding;

(4) A tariff proceeding which has been set for investigation under section 204 or 205 of the Communications Act (including directly associated waiver requests or requests for special permission) (see also § 1.1204(b)(4));

(5) Unless designated for hearing, a proceeding under section 214(a) of the Communications Act that does not also involve applications under Title III of the Communications Act (see also § 1.1208);

(6) Unless designated for hearing, a proceeding involving an application for a Cable Landing Act license that does not also involve applications under Title III of the Communications Act (see also § 1.1208);

(7) A proceeding involving a request for information filed pursuant to the Freedom of Information Act;

NOTE 2 TO PARAGRAPH (a): Where the requested information is the subject of a request for confidentiality, the person filing the request for confidentiality shall be deemed a party.

(8) A proceeding before a Joint Board or a proceeding before the Commission involving a recommendation from a Joint Board;

(9) A proceeding conducted pursuant to section 220(b) of the Communications Act for prescription of common carrier depreciation rates upon release of a public notice of specific proposed depreciation rates (see also § 1.1204(b)(4));

(10) A proceeding to prescribe a rate of return for common carriers under section 205 of the Communications Act; and

(11) A cable rate complaint proceeding pursuant to section 623(c) of the Communications Act where the complaint is filed on FCC Form 329.

(12) [Reserved]

(13) Petitions for Commission preemption of authority to review interconnection agreements under § 252(e)(5) of the Communications Act and petitions for preemption under § 253 of the Communications Act.

NOTE 3 TO PARAGRAPH (a): In a permit-but-disclose proceeding involving only one “party,” as defined in § 1.1202(d) of this section, the party and the Commission may freely make presentations to each other and need not comply with the disclosure requirements of paragraph (b) of this section.

(b) The following disclosure requirements apply to *ex parte* presentations in permit but disclose proceedings:

(1) *Oral presentations.* A person who makes an oral *ex parte* presentation subject to this section shall submit to the Commission’s Secretary a memorandum that lists all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and summarizes all data presented and arguments made during the oral *ex parte* presentation. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the oral *ex parte* 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.

NOTE TO PARAGRAPH (b)(1): Where, for example, presentations occur in the form of discussion at a widely attended meeting, preparation of a memorandum as specified in the rule might be cumbersome. Under these circumstances, the rule may be satisfied by submitting a transcript or recording of the discussion as an alternative to a memorandum. Likewise, Commission staff in its discretion may file an *ex parte* summary of a multiparty meeting as an alternative to having each participant file a summary.

(2) *Written and oral presentations.* A written *ex parte* presentation and a memorandum summarizing an oral *ex parte* presentation (and cover letter, if any) shall clearly identify the proceeding to which it relates, including the docket number, if any, and must be labeled as an *ex parte* presentation.

Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and, accordingly, must be filed consistent with the provisions of this section. Consistent with the requirements of §1.49 paragraphs (a) and (f), additional copies of all written *ex parte* presentations and notices of oral *ex parte* presentations, and any replies thereto, shall be mailed, e-mailed or transmitted by facsimile to the Commissioners or Commission employees who attended or otherwise participated in the presentation.

(i) In proceedings governed by §1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, 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). If electronic filing would present an undue hardship, 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.

(ii) *Confidential Information*. In cases where a filer believes that one or more of the documents or portions thereof to be filed should be withheld from public inspection, the filer should file electronically a request that the information not be routinely made available for public inspection pursuant to §0.459 of this chapter. Accompanying any such request, the filer shall include in paper form a copy of the document(s) containing the confidential information, and also shall file electronically a copy of the same document(s) with the confidential information redacted. The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclo-

sure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(iii) *Filing dates outside the Sunshine period*. Except as otherwise provided in paragraphs (b)(2)(iv) and (v) of this section, all written *ex parte* presentations and all summaries of oral *ex parte* presentations must be filed no later than two business days after the presentation. As set forth in §1.4(e)(2), a “business day” shall not include a holiday (as defined in §1.4(e)(1)). In addition, for purposes of computing time limits under the rules governing *ex parte* presentations, a “business day” shall include the full calendar day (*i.e.*, from 12:00 a.m. Eastern Time until 11:59:59 p.m. Eastern Time).

Example: On Tuesday a party makes an *ex parte* presentation in a permit-but-disclose proceeding to a Commissioner. The second business day following the *ex parte* presentation is the following Thursday (absent an intervening holiday). The presenting party must file its *ex parte* notice before the end of the day (11:59:59 p.m.) on Thursday. Similarly, if an *ex parte* presentation is made on Friday, the second business day ordinarily would be the following Tuesday, and the *ex parte* notice must be filed no later than 11:59:59 p.m. on that Tuesday.

(iv) *Filing dates for presentations made on the day that the Sunshine notice is released*. For presentations made on the day the Sunshine notice is released, any written *ex parte* presentation or memorandum summarizing an oral *ex parte* presentation required pursuant to §1.1206 or §1.1208 must be submitted no later than the end of the next business day. Written replies, if any, shall be filed no later than two business days following the presentation, and shall be limited in scope to the specific issues and information presented in the *ex parte* filing to which they respond.

Example: On Tuesday, a party makes an *ex parte* presentation in a permit-but-disclose proceeding to a Commissioner. That same day, the Commission’s Secretary releases the Sunshine Agenda for the next Commission meeting and that proceeding appears on the Agenda. The Sunshine period begins as of Wednesday, and therefore the presenting party must file its *ex parte* notice by the end of the day (11:59:59 p.m.) on Wednesday. A