

**§ 52.770 Identification of plan.**

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(c) \* \* \*

(112) On June 26, 1995, Indiana submitted an agreed order with Keil Chemical Division, Ferro Corporation (Keil Chemical) requiring volatile organic compound emission control at Keil Chemical's Pyro-Chek manufacturing process, located in Hammond, Lake County, Indiana.

(i) *Incorporation by reference.* Agreed Order of the Indiana Department of Environmental Management, Cause No. A-2250, adopted and effective, July 29, 1994.

3. Section 52.777 is amended by adding paragraphs (k) and (l) to read as follows:

**§ 52.777 Control strategy: Photochemical oxidants (hydrocarbon).**

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(k) On June 26, 1995, Indiana submitted a 15 percent rate-of-progress plan for the Lake and Porter Counties portion of the Chicago-Gary-Lake County ozone nonattainment area. This plan satisfies the counties' requirements under section 182(b)(1) of the Clean Air Act, as amended in 1990.

(l) On June 26, 1995, Indiana submitted a 3 percent contingency plan for the Lake and Porter Counties portion of the Chicago-Gary-Lake County ozone nonattainment area. This plan satisfies the counties' requirements under section 172(c)(9) and 182(c)(9) of the Clean Air Act, as amended in 1990.

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 0 and 1**

[GC Docket No. 95-21; FCC 97-92]

**Ex Parte Presentations in Commission Proceedings**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Commission amends its regulations concerning ex parte presentations in Commission proceedings. The new rules simplify the determination in particular proceedings of whether ex parte presentations are permissible and whether they must be disclosed. The proposed rules also modify the Commission's "Sunshine period prohibition." Certain other minor amendments of the rules are made. The intended effect of the amendments is to

make the rules simpler and easier to comply with, to enhance the fairness of the Commission's processes, and to facilitate the public's ability to communicate with the Commission.

**EFFECTIVE DATE:** June 2, 1997.**FOR FURTHER INFORMATION CONTACT:** David S. Senzel, Office of General Counsel (202) 418-1760.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, GC Docket No. 95-21, adopted on March 13, 1997, and released March 19, 1997. The full text of the report and order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., Suite 140, 2100 M Street NW., Washington, D.C. 20037, telephone (202) 857-3800.

**Summary of Report and Order**

1. In this report and order, the Commission revises its rules governing ex parte presentations in Commission proceedings. The revision is intended to make the rules simpler and clearer, and thus more effective in ensuring fairness in Commission proceedings. The Commission stresses that the ex parte rules are important and that full compliance is expected.

2. The Commission revises its system for specifying whether proceedings are "restricted," "permit-but-disclose" or "exempt," which determine how ex parte presentations are treated in that proceeding subject to specific exceptions. (An ex parte presentation is a communication to a Commission decisionmaker concerning the outcome or merits of a proceeding which—if written—is not served on all parties and—if oral—is made without notice and the opportunity for all parties to be present.) In restricted proceedings, ex parte presentations are prohibited. In permit-but-disclose proceedings, ex parte presentations are permitted but must be disclosed on the record of the proceeding. In exempt proceedings, ex parte presentations may be made without limitation. The revised rules adopt a simplified system for determining the status of a proceeding.

3. Under this system, all proceedings not specifically designated as exempt or permit-but-disclose (either by the rules or by order or public notice in an individual proceeding) are restricted from the point that someone becomes a "party" to the proceeding. Thus, the extent of the restriction is governed by

the definition of "party." If there is only a single "party" (as defined in the ex parte rules) in a restricted proceeding, the Commission and the party may freely make presentations to each other because there is no other party to be served or with a right to be present. If there are additional parties, then those parties must be served or be given an opportunity to be present. Under the rules, parties include: (1) any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person who files a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application; (2) any person who files a complaint which is served on the subject of the complaint or which is a formal complaint under 47 U.S.C. § 208 and § 1.721 of our rules, and the person who is the subject of such a complaint; (3) any person who files a petition to revoke a license or other authorization or a petition for an order to show cause and the licensee or entity who is the subject of the petition; (4) the subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order, or any other person who has otherwise been given formal party status in a proceeding; and (5) in a rulemaking proceeding (other than a broadcast allotment proceeding) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, the general public. To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairman or an individual Commissioner will not confer party status since such filings do not demonstrate the requisite intent or formality for party status.

4. A few matters will continue to be expressly classified as exempt. These include (1) notice of inquiry proceedings, (2) petitions for rulemaking, (3) tariff proceedings before they are set for investigation, and (4) proceedings involving complaints which are not served on the target of the complaint, are informal § 208 complaints, or are cable rate complaints not filed on the standard complaint form.

5. Other proceedings are classified as permit-but-disclose (a term replacing the former term "nonrestricted"). These

include: (1) declaratory ruling proceedings; (2) proceedings under 47 U.S.C. § 214(a) that do not involve applications under Title III of the Communications Act; and (3) Freedom of Information Act requests. As under current practice, however, the Commission may decide on a case-by-case basis that because a petition for declaratory relief predominately concerns the rights of particular parties, it should be treated as restricted, and may so modify treatment of the proceeding. Applications for a Cable Landing Act license are similar to § 214 applications (and often filed in conjunction therewith), and the new rules also expressly subject them to permit-but-disclose procedures, again provided that no Title III applications are involved. Permit-but-disclose proceedings also include: (1) tariff investigations which have been set for investigation under 47 U.S.C. § 204; (2) proceedings conducted pursuant to 47 U.S.C. § 220(b) for prescription of common carrier depreciation rates (upon release of a public notice of specific proposed depreciation rates); and (3) proceedings to prescribe a rate of return under 47 U.S.C. § 205. Additionally, the Commission will continue to treat proceedings before a Joint Board or before the Commission involving a recommendation from a Joint Board as permit-but-disclose. Proceedings involving cable rate complaints under 47 CFR § 543(c) and filed on the required form (FCC form 329) will also be treated as permit-but-disclose.

6. The Commission also makes an exception to its Sunshine period prohibition. Pursuant to the rules, once a proceeding has been placed on a sunshine notice, no presentations, whether *ex parte* or not, are permitted until the Commission has released the full text of the order in the proceeding noticed in the Sunshine notice, deleted the item from the sunshine agenda, or returned the item for further staff consideration. The prohibition is intended to give the Commission "a period of repose" in which to make decisions. The Commission exempts from the prohibition the discussion of recent Commission actions at widely-attended meetings or symposia.

7. The Commission also modifies the *ex parte* rules in certain respects. It gives additional authority to the Office of General Counsel to evaluate alleged *ex parte* violations. It increases to at least two a week the frequency of publishing lists of *ex parte* presentations. It also clarifies several aspects of the rules and codifies some existing interpretations and policies.

### Regulatory Flexibility Certification

8. The NPRM (60 FR 8995 (February 16, 1995)) incorporated an Initial Regulatory Flexibility Analysis (IFRA) of the proposed rules pursuant to 5 U.S.C. § 605. No comments were received in direct response to the IFRA. Section 604 of the Regulatory Flexibility Act, as amended, requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless the Commission certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. § 605(b). The Commission believes that the rules it adopted will not have a significant economic impact on a substantial number of small entities.

9. As noted above, the Commission's purpose in revising the *ex parte* rules is to simplify and clarify them. It finds that the modifications do not impose any additional compliance burden on persons dealing with the Commission including small entities. It also finds that the revised rules clarify the situations in which *ex parte* presentations are permissible, when they must be reported on the record, and when they are prohibited, without significantly changing the current rules substantively. The Commission believes that the revised rules do not otherwise affect the rights of persons to participate as parties in Commission proceedings. It further finds that there is no reason to believe that operation of the revised rules will impose any costs on parties in particular proceedings subject to those rules, beyond those costs incurred under our former rules. Rather, the Commission anticipates that the revisions will serve to make the rules easier to comply with and more effective for small entities as well as others. By increasing the frequency with which the Commission issues reports of *ex parte* presentations, the amended rules will make it easier for small entities and others to determine when *ex parte* presentations have occurred.

10. Accordingly, the Commission certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104-121, 110 Stat. 847 (1996), that the rules will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b).

### List of Subjects in 47 CFR Parts 0 and 1

Administrative practice and procedure, Radio, Telecommunications, Television.

Federal Communications Commission

**William F. Caton,**  
*Acting Secretary.*

### Rule Changes

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

#### PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.11(a)(9) is revised to read as follows:

#### § 0.11 Functions of the Office.

(a) \* \* \*

(9) In consultation with the General Counsel, approve waivers of the applicability of the conflict of interest statutes pursuant to 18 U.S.C. 205 and 208, or initiate necessary actions where other resolutions of conflicts of interest are called for.

\* \* \* \* \*

3. Section 0.41(o) is added to read as follows:

#### § 0.41 Functions of the Office.

\* \* \* \* \*

(o) To serve as the principal operating office on *ex parte* matters involving restricted proceedings. To review and dispose of all *ex parte* communications received from the public and others.

4. Section 0.251(h) is added to read as follows:

#### § 0.251 Authority delegated.

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(h) The General Counsel is delegated authority to issue rulings on whether violations of the *ex parte* rules have occurred.

#### PART 1—PRACTICE AND PROCEDURE

5. The authority citation for Part 1 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

6. Section 1.1200 is revised to read as follows:

#### § 1.1200 Introduction.

(a) *Purpose.* To ensure the fairness and integrity of its decision-making, the Commission has prescribed rules to

regulate ex parte presentations in Commission proceedings. These rules specify "exempt" proceedings, in which ex parte presentations may be made freely (§ 1.1204(b)), "permit-but-disclose" proceedings, in which ex parte presentations to Commission decision-making personnel are permissible but subject to certain disclosure requirements (§ 1.1206), and "restricted" proceedings in which ex parte presentations to and from Commission decision-making personnel are generally prohibited (§ 1.1208). In all proceedings, a certain period ("the Sunshine Agenda period") is designated in which all presentations to Commission decision-making personnel are prohibited (§ 1.1203). The limitations on ex parte presentations described in this section are subject to certain general exceptions set forth in § 1.1204(a). Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable ex parte rules by order, letter, or public notice. Joint Boards may modify the ex parte rules in proceedings before them.

(b) Inquiries concerning the propriety of ex parte presentations should be directed to the Office of General Counsel.

7. Section 1.1202 is revised to read as follows:

**§ 1.1202 Definitions.**

For the purposes of this subpart, the following definitions apply:

(a) *Presentation.* A communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this term are communications which are inadvertently or casually made, inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken. However, a status inquiry which states or implies a view as to the merits or outcome of the proceeding or a preference for a particular party, which states why timing is important to a particular party or indicates a view as to the date by which a proceeding should be resolved, or which otherwise is intended to

address the merits or outcome or to influence the timing of a proceeding is a presentation.

**Note to paragraph (a):** A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, no view is expressed as to the merits or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved. A presentation by a party in a restricted proceeding requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an ex parte basis subject to the provisions of § 1.1204(a)(11).

(b) *Ex parte presentation.* Any presentation which:

- (1) If written, is not served on the parties to the proceeding; or
- (2) If oral, is made without advance notice to the parties and without opportunity for them to be present.

**Note to paragraph (b):** Written communications include electronic submissions transmitted in the form of texts, such as by Internet electronic mail.

(c) *Decision-making personnel.* Any member, officer, or employee of the Commission, or, in the case of a Joint Board, its members or their staffs, who is or may reasonably be expected to be involved in formulating a decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisional process shall not be treated as a decision-maker with respect to that proceeding. Thus, any person designated as part of a separate trial staff shall not be considered a decision-making person in the designated proceeding. Unseparated Bureau or Office staff shall be considered decision-making personnel with respect to decisions, rules, and orders in which their Bureau or Office participates in enacting, preparing, or reviewing.

(d) *Party.* Unless otherwise ordered by the Commission, the following persons are parties:

- (1) Any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application) filing a written submission referencing and regarding such pending filing which is served on

the filer, or, in the case of an application, any person filing a mutually exclusive application;

**Note 1 to paragraph (d):** Persons who file mutually exclusive applications for services that the Commission has announced will be subject to competitive bidding or lotteries shall not be deemed parties with respect to each others' applications merely because their applications are mutually exclusive. Therefore, such applicants may make presentations to the Commission about their own applications provided that no one has become a party with respect to their application by other means, e.g., by filing a petition or other opposition against the applicant or an associated waiver request, if the petition or opposition has been served on the applicant.

(2) Any person who files a complaint which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721, and the person who is the subject of such a complaint that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721;

(3) Any person who files a petition to revoke a license or other authorization or who files a petition for an order to show cause and the licensee or other entity that is the subject of the petition;

(4) The subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order;

(5) Any other person who has otherwise been given formal party status in a proceeding; and

(6) In an informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act (other than a proceeding for the allotment of a broadcast channel) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, members of the general public after the issuance of a notice of proposed rulemaking or other order as provided under § 1.1206(a)(1) or (2).

**Note 2 to paragraph (d):** To be deemed a party, a person must make the relevant filing with the Secretary, the relevant Bureau or Office, or the Commission as a whole. Written submissions made only to the Chairman or individual Commissioners will not confer party status.

**Note 3 to paragraph (d):** The fact that a person is deemed a party for purposes of this subpart does not constitute a determination that such person has satisfied any other legal or procedural requirements, such as the operative requirements for petitions to deny or requirements as to timeliness. Nor does it constitute a determination that such person has any other procedural rights, such as the right to intervene in hearing proceedings. The Commission or the staff may also

determine in particular instances that persons who qualify as "parties" under § 1.1202(d) should nevertheless not be deemed parties for purposes of this subpart.

**Note 4 to paragraph (d):** Individual listeners or viewers submitting comments regarding a pending broadcast application pursuant to § 1.1204(a)(8) will not become parties simply by service of the comments. The Mass Media Bureau may, in its discretion, make such a commenter a party, if doing so would be conducive to the Commission's consideration of the application or would otherwise be appropriate.

(e) *Matter designated for hearing.* Any matter that has been designated for hearing before an administrative law judge or which is otherwise designated for hearing in accordance with procedures in 5 U.S.C. 554.

8. Section 1.1203 is revised to read as follows:

**§ 1.1203 Sunshine period prohibition.**

(a) With respect to any Commission proceeding, all presentations to decision-makers concerning matters listed on a Sunshine Agenda, whether ex parte or not, are prohibited during the period specified by paragraph (b) of this section:

(1) The presentation is exempt under § 1.1204(a);

(2) The presentation relates to settlement negotiations and otherwise complies with any ex parte restrictions in this subpart;

(3) The presentation occurs in the course of a widely attended speech or panel discussion and concerns a Commission action in an exempt or a permit-but-disclose proceeding that has been adopted (not including private presentations made on the site of a widely attended speech or panel discussion); or

(4) The presentation is made by a member of Congress or his or her staff, or by other agencies or branches of the federal government or their staffs in a proceeding exempt under § 1.1204 or subject to permit-but-disclose requirements under § 1.1206. If the presentation is of substantial significance and clearly intended to affect the ultimate decision, the presentation (or, if oral, a summary of the presentation) must be placed in the record of the proceeding by Commission staff or by the presenter in accordance with the procedures set forth in § 1.1206(b).

(b) The prohibition set forth in paragraph (a) of this section applies from the release of a public notice that a matter has been placed on the Sunshine Agenda until the Commission:

(1) Releases the text of a decision or order relating to the matter;

(2) Issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or

(3) Issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first.

9. Section 1.1204 is revised to read as follows:

**§ 1.1204 Exempt ex parte presentations and proceedings.**

(a) *Exempt ex parte presentations.* The following types of presentations are exempt from the prohibitions in restricted proceedings (§ 1.1208), the disclosure requirements in permit-but-disclose proceedings (§ 1.1206), and the prohibitions during the Sunshine Agenda and circulation period prohibition (§ 1.1203):

(1) The presentation is authorized by statute or by the Commission's rules to be made without service, see, e.g., § 1.333(d), or involves the filing of required forms;

(2) The presentation is made by or to the General Counsel and his or her staff and concerns judicial review of a matter that has been decided by the Commission;

(3) The presentation directly relates to an emergency in which the safety of life is endangered or substantial loss of property is threatened, provided that, if not otherwise submitted for the record, Commission staff promptly places the presentation or a summary of the presentation in the record and discloses it to other parties as appropriate.

(4) The presentation involves a military or foreign affairs function of the United States or classified security information;

(5) The presentation is to or from an agency or branch of the Federal Government or its staff and involves a matter over which that agency or branch and the Commission share jurisdiction provided that, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will, if not otherwise submitted for the record, be disclosed by the Commission no later than at the time of the release of the Commission's decision;

(6) The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a telecommunications competition matter in a proceeding which has not been designated for hearing and in which the relevant agency is not a party provided that, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making

process will be disclosed by the Commission no later than at the time of the release of the Commission's decision;

**Note 1 to paragraph (a):** Under paragraphs (a)(5) and (a)(6) of this section, information will be relied on and disclosure will be made only after advance coordination with the agency involved in order to ensure that the agency involved retains control over the timing and extent of any disclosure that may have an impact on that agency's jurisdictional responsibilities. If the agency involved does not wish such information to be disclosed, the Commission will not disclose it and will disregard it in its decision-making process, unless it fits within another exemption not requiring disclosure (e.g., foreign affairs). The fact that an agency's views are disclosed under paragraphs (a)(5) and (a)(6) does not preclude further discussions pursuant to, and in accordance with, the exemption.

(7) The presentation is between Commission staff and an advisory coordinating committee member with respect to the coordination of frequency assignments to stations in the private land mobile services or fixed services as authorized by 47 U.S.C. 332;

(8) The presentation is a written presentation made by a listener or viewer of a broadcast station who is not a party under § 1.1202(d)(1), and the presentation relates to a pending application that has not been designated for hearing for a new or modified broadcast station or license, for renewal of a broadcast station license or for assignment or transfer of control of a broadcast permit or license;

(9) Confidentiality is necessary to protect persons making ex parte presentations from possible reprisals; or

(10) The presentation is 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, subject to the following limitations:

(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 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 Rcd 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 requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay. A 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.

(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; 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).

10. Section 1.1206 is revised to read as follows:

**§ 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:

(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));

(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 1 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.

**Note 2 to paragraph (a):** In a permit-but-disclose proceeding involving only one "party," as defined in § 1.1202(d) of this subpart, 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) *Written presentations.* A person who makes a written ex parte presentation subject to this section shall, no later than the next business day after the presentation, submit two

copies of the presentation to the Commission's secretary under separate cover for inclusion in the public record. The presentation (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that two copies have been submitted to the Secretary, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies shall be filed for each proceeding.

(2) *Oral presentations.* A person who makes an oral ex parte presentation subject to this section that presents data or arguments not already reflected in that person's written comments, memoranda or other filings in that proceeding shall, no later than the next business day after the presentation, submit to the Commission's Secretary, with copies to the Commissioners or Commission employees involved in the oral presentation, an original and one copy of a memorandum which summarizes the new data or arguments. 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. The memorandum (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that an original and one copy have been submitted to the Secretary, and must be labeled as an ex parte presentation. If the presentation relates to more than one proceeding, two copies of the memorandum (or an original and one copy) shall be filed for each proceeding.

**Note 1 to paragraph (b):** 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 tape recording of the discussion as an alternative to a memorandum.

(3) Notwithstanding paragraphs (b)(1) and (b)(2) of this section, in permit-but-disclose proceedings presentations made by members of Congress or their staffs or by an agency or branch of the Federal Government or its staff shall be treated as ex parte presentations only if the presentations are of substantial significance and clearly intended to affect the ultimate decision. The Commission staff shall prepare a written summary of any such oral presentations and place them in the record in accordance with paragraph (b)(2) of this section and place any such written presentations in the record in

accordance with paragraph (b)(1) of this section.

(4) *Notice of ex parte presentations.* The Commission's Secretary or, in the case of non-docketed proceedings, the relevant Bureau or Office shall place in the public file or record of the proceeding written ex parte presentations and memoranda reflecting oral ex parte presentations. The Secretary shall issue a public notice listing any written ex parte presentations or written summaries of oral ex parte presentations received by his or her office relating to any permit-but-disclose proceeding. Such public notices should generally be released at least twice per week.

**Note 2 to paragraph (b):** Interested persons should be aware that some ex parte filings, for example, those not filed in accordance with the requirements of this paragraph (b), might not be placed on the referenced public notice. All ex parte presentations and memoranda filed under this section will be available for public inspection in the public file or record of the proceeding, and parties wishing to ensure awareness of all filings should review the public file or record.

**Note 3 to paragraph (b):** As a matter of convenience, the Secretary may also list on the referenced public notices materials, even if not ex parte presentations, that are filed after the close of the reply comment period or, if the matter is on reconsideration, the reconsideration reply comment period.

11. Section 1.1208 is revised to read as follows:

**§ 1.1208 Restricted proceedings.**

Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a), ex parte presentations (other than ex parte presentations exempt under § 1.1204 (a)) are prohibited in all proceedings not listed as exempt in § 1.1204(b) or permit-but-disclose in § 1.1206(a) until the proceeding is no longer subject to administrative reconsideration or review or judicial review. Proceedings in which ex parte presentations are prohibited, referred to as "restricted" proceedings, include, but are not limited to, all proceedings that have been designated for hearing, proceedings involving amendments to the broadcast table of allotments, applications for authority under Title III of the Communications Act, and all waiver proceedings (except for those directly associated with tariff filings).

**Note 1 to § 1.1208:** In a restricted proceeding involving only one "party," as defined in § 1.1202(d), the party and the Commission may freely make presentations to each other because there is no other party to be served or with a right to have an opportunity to be present. See § 1.1202(b). Therefore, to determine whether presentations are permissible in a restricted

proceeding without service or notice and an opportunity for other parties to be present the definition of a "party" should be consulted. **Examples:** After the filing of an uncontested application or waiver request, the applicant or other filer would be the sole party to the proceeding. The filer would have no other party to serve with or give notice of any presentations to the Commission, and such presentations would therefore not be "ex parte presentations" as defined by § 1.1202(b) and would not be prohibited. On the other hand, in the example given, because the filer is a party, a third person who wished to make a presentation to the Commission concerning the application or waiver request would have to serve or notice the filer. Further, once the proceeding involved additional "parties" as defined by § 1.1202(d) (e.g., an opponent of the filer who served the opposition on the filer), the filer and other parties would have to serve or notice all other parties.

**Note 2 to § 1.1208:** Consistent with § 1.1200(a), the Commission or its staff may determine that a restricted proceeding not designated for hearing involves primarily issues of broadly applicable policy rather than the rights and responsibilities of specific parties and specify that the proceeding will be conducted in accordance with the provisions of § 1.1206 governing permit-but-disclose proceedings.

12. Section 1.1210 is revised to read as follows:

**§ 1.1210 Prohibition on solicitation of presentations.**

No person shall solicit or encourage others to make any presentation which he or she is prohibited from making under the provisions of this subpart.

13. Section 1.1212 is revised to read as follows:

**§ 1.1212 Procedures for handling of prohibited ex parte presentations.**

(a) Commission personnel who believe that an oral presentation which is being made to them or is about to be made to them is prohibited shall promptly advise the person initiating the presentation that it is prohibited and shall terminate the discussion.

(b) Commission personnel who receive oral ex parte presentations which they believe are prohibited shall forward to the Office of General Counsel a statement containing the following information:

- (1) The name of the proceeding;
- (2) The name and address of the person making the presentation and that person's relationship (if any) to the parties to the proceeding;
- (3) The date and time of the presentation, its duration, and the circumstances under which it was made;
- (4) A full summary of the substance of the presentation;
- (5) Whether the person making the presentation persisted in doing so after

being advised that the presentation was prohibited; and

(6) The date and time that the statement was prepared.

(c) Commission personnel who receive written ex parte presentations which they believe are prohibited shall forward them to the Office of General Counsel. If the circumstances in which the presentation was made are not apparent from the presentation itself, a statement describing those circumstances shall be submitted to the Office of General Counsel with the presentation.

(d) Prohibited written ex parte presentations and all documentation relating to prohibited written and oral ex parte presentations shall be placed in a public file which shall be associated with but not made part of the record of the proceeding to which the presentations pertain. Such materials may be considered in determining the merits of a restricted proceeding only if they are made part of the record and the parties are so informed.

(e) If the General Counsel determines that an ex parte presentation or presentation during the Sunshine period is prohibited by this subpart, he or she shall notify the parties to the proceeding that a prohibited presentation has occurred and shall serve on the parties copies of the presentation (if written) and any statements describing the circumstances of the presentation. Service by the General Counsel shall not be deemed to cure any violation of the rules against prohibited ex parte presentations.

(f) If the General Counsel determines that service on the parties would be unduly burdensome because the parties to the proceeding are numerous, he or she may issue a public notice in lieu of service. The public notice shall state that a prohibited presentation has been made and may also state that the presentation and related materials are available for public inspection.

(g) The General Counsel shall forward a copy of any statement describing the circumstances in which the prohibited ex parte presentation was made to the person who made the presentation. Within ten days thereafter, the person who made the presentation may file with the General Counsel a sworn declaration regarding the presentation and the circumstances in which it was made. The General Counsel may serve copies of the sworn declaration on the parties to the proceeding.

(h) Where a restricted proceeding precipitates a substantial amount of correspondence from the general public, the procedures in paragraphs (c)

through (g) of this section will not be followed with respect to such correspondence. The correspondence will be placed in a public file and be made available for public inspection.

14. Section 1.1214 is revised to read as follows:

**§ 1.1214 Disclosure of information concerning violations of this subpart.**

Any party to a proceeding or any Commission employee who has substantial reason to believe that any violation of this subpart has been solicited, attempted, or committed shall promptly advise the Office of General Counsel in writing of all the facts and circumstances which are known to him or her.

15. Section 1.1216 is revised to read as follows:

**§ 1.1216 Sanctions.**

(a) *Parties.* Upon notice and hearing, any party to a proceeding who directly or indirectly violates or causes the violation of any provision of this subpart, or who fails to report the facts and circumstances concerning any such violation as required by this subpart, may be disqualified from further participation in that proceeding. In proceedings other than a rulemaking, a party who has violated or caused the violation of any provision of this subpart may be required to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected. In any proceeding, such alternative or additional sanctions as may be appropriate may also be imposed.

(b) *Commission personnel.* Commission personnel who violate provisions of this subpart may be subject to appropriate disciplinary or other remedial action as provided in part 19 of this chapter.

(c) *Other persons.* Such sanctions as may be appropriate under the circumstances shall be imposed upon other persons who violate the provisions of this subpart.

[FR Doc. 97-8042 Filed 4-2-97; 8:45 am]

BILLING CODE 6712-01-P

**47 CFR Part 73**

[MM Docket No. 95-167; RM-8699]

**Radio Broadcasting Services; Claremore and Chelsea, OK**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Michael P. Stephens, reallots Channel 264A from Claremore to Chelsea, Oklahoma, as the community's first local aural transmission service, and modifies Station KTFR's construction permit to specify Chelsea as its community of license. See 60 FR 56554, November 9, 1995. Channel 264A can be allotted to Chelsea in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.0 kilometers (1.2 miles) southwest, at coordinates 36-31-27 NL and 95-26-55 WL, to avoid a short-spacing to Station KGLC, Channel 265A, Miami, OK. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 12, 1997.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 95-167, adopted March 19, 1997, and released March 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Claremore, Channel 264A and adding Chelsea, Channel 264A.

Federal Communications Commission

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-8437 Filed 4-2-97; 8:45 am]

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