

FCC Revises Rules for Reporting Ex Parte Communications

March 2011

On February 2, 2011, the Federal Communications Commission (FCC) released a Report and Order (R&O) and Further Notice of Proposed Rulemaking (FNPRM) to amend its rules governing *ex parte* presentations made in rulemaking and other permit-but-disclose proceedings. The R&O generally adopts the proposals set forth in the Commission's March 25, 2010, NPRM, and the FNPRM solicits comments on a proposal to require parties to provide additional disclosure regarding real parties-in-interest.

The R&O revises the Commission's *ex parte* rules such that parties making oral *ex parte* presentations in rulemaking and permit-but-disclose proceedings must file *ex parte* notices, even where the presentation is limited to issues and arguments that are already contained with a proceeding's record. Under the new rules, *ex parte* notices must include a description of the matters discussed, either by a brief summary or cite to the record (for presentations limited to facts and arguments already contained in the record) or a more detailed description (for presentations involving new information or arguments). The R&O also modifies the deadline for filing *ex parte* notices (two business days outside of the Sunshine period; the next business day on the day that a Sunshine notice is released; and the same day during the Sunshine period). In addition, the R&O implements certain technical requirements regarding the electronic filing of *ex parte* notices. Finally, in the R&O, the Commission authorized the Enforcement Bureau to levy forfeitures for violation of the agency's *ex parte* rules. The rule modifications in the R&O will become effective 30 days following the item's publication in the *Federal Register*.

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law

The FNPRM seeks comment on a proposal to require parties to provide enhanced disclosure about real parties-in-interest. Specifically, the FNPRM asks whether it is sufficient to apply enhanced disclosure obligations on *ex parte* filings or whether such a rule should be expanded to apply to all or certain categories of FCC proceedings. The item also solicits comments on how enhanced disclosure requirements would apply to different categories of entities. Finally, the FNPRM queries whether disclosure is appropriate in cases where the information is easily found among the Commission's records or on an entity's website. Comments in response to the FNPRM are due 45 days following *Federal Register* publication. Reply Comments are due 75 days after *Federal Register* publication.