

Before the
Federal Communications Commission
Washington DC 20554

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

**Comments of the
Fixed Wireless Communications Coalition**

The Fixed Wireless Communications Coalition (FWCC)¹ files these comments in the above-captioned proceeding.²

A. INTRODUCTION

These comments address the Commission's proposed disclosure requirements in *ex parte* filings. The *Further Notice* variously mentions corporations, trade associations, non-profit public interest groups, grass-roots and issue-specific organizations, and individuals. Here we draw the Commission's attention to another type of *ex parte* filer: the coalition. We ask the Commission to frame rules that achieve its disclosure goals without unduly burdening coalitions such as the FWCC.

¹ The FWCC is a coalition of companies, associations, and individuals interested in the fixed service -- *i.e.*, in terrestrial fixed microwave communications. Our membership includes manufacturers of microwave equipment, fixed microwave engineering firms, licensees of terrestrial fixed microwave systems and their associations, and communications service providers and their associations. The membership also includes railroads, public utilities, petroleum and pipeline entities, public safety agencies, cable TV providers, backhaul providers, and/or their respective associations, communications carriers, and telecommunications attorneys and engineers. Our members build, install, and use both licensed and unlicensed point-to-point, point-to-multipoint, and other fixed wireless systems, in frequency bands from 900 MHz to 95 GHz. For more information, see www.fwcc.us.

² *Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4517 at ¶¶ 77-84 (2011) ("*Further Notice*").

Specifically, the Commission should not require coalitions like the FWCC to name each member entity, or to specifically identify each funding source by name. The Commission can instead achieve its objectives by requiring coalitions to describe their membership and funding in more general terms, as suggested below, with rules narrowly tailored so as not to infringe on coalitions' constitutional right to assemble and petition the government.

B. ABOUT COALITIONS

The Commission may wish to distinguish among types of coalitions.

“Standing coalitions” present the views of entities that share long-term common interests. Typically they carry out functions similar to the lobbying arm of a trade association, but without the structure and other member benefits (conventions, publications, public relations, etc.) that most trade associations offer. The FWCC, described more fully below, exemplifies this category. Thanks in part to longevity and consistency of its positions, the true interests of a standing coalition are rarely in doubt.

“Ad hoc coalitions” assemble temporarily, often to participate in one proceeding, and sometimes just to make one presentation. A law firm having multiple clients with shared concerns might decide, in consultation with the clients, that it can deliver their message more effectively by filing as a coalition, possibly bringing in non-client entities as well. Or a party may gather the endorsement of others in its industry to show the Commission that its position enjoys broad support. Filings by these groups generally list the members' names, as a way of communicating to the Commission that the positions expressed reflect a broad base of support.

“Coalitions in name only” present the Commission with its biggest challenges on disclosure. Often these bodies have generic names: “Coalition of Americans for Efficient

Spectrum,” and the like.³ Sometimes they are formed and funded by special interest groups under a name chosen to conceal their true identities. The “coalition” in these cases is simply a screen behind which the real party in interest can hide while presenting its views.

The tone of the *Further Notice* suggests the Commission seeks to prevent the type of pretense presented by this last kind of group. The FWCC files this pleading to request that, in doing so, the Commission not inadvertently interfere with the operation of coalitions that do not present any such risk.

C. ABOUT THE FWCC

The FWCC is a true coalition. Legally it is an unincorporated association, which is to say it is not a legal entity in its own right, but rather exists only as a collection of its members, uniting to combine their voices on specific issues.

The membership is diverse. It includes manufacturers, service providers, and engineering firms that range in size from small businesses to very large global enterprises. Several members are themselves trade associations whose members use fixed microwave facilities for public safety or critical infrastructure. Also active are a number of unaffiliated individuals.

The FWCC has no office and no paid staff, and no directors or executive committee. Its only officers are two co-chairs, who have no decision-making authority. All decisions are open to all members, who review and comment on drafts of pleadings and positions and participate in

³ This name is meant to be fictitious. Any resemblance to an actual organization is coincidental.

a monthly conference call. Much additional business is conducted by email, using address lists that include all members.⁴

There are no formal votes; decisions are made by consensus. Sometimes a member requests a disclaimer stating that it does not support a particular position. If more than a few members opt out, or if disagreement otherwise prevents a clear consensus, the FWCC takes no public position on the issue.

Members do not pay fixed dues, but support the FWCC's activities through voluntary contributions. We also depend heavily on members' volunteered labor for technical analyses, preparation of pleadings, presentations to the Commission, and administration.

D. PROPOSED DISCLOSURE RULES

The goals of the *Further Notice* will be adequately served by requiring the *ex parte* filings of a standing coalition to make the following disclosures:

- A “statement of interests”—*i.e.*, a list of the types of entities that make up the coalition, along the lines of footnote 1, above. A list of members by name should be optional.
- A statement as to the nature of the funding sources that support activities before the Commission. The statement “All funding is provided by coalition members” would suffice, if true; otherwise, the pleading would have to supply additional disclosures, *e.g.*, “Significant funding is provided by the XYZ industry.”

The FWCC opposes requiring a coalition to disclose a list of its members. At least in our case, the subset of members that actively supports a particular pleading typically varies from one issue to another. Some members participate in many dockets; others, such as a licensee in a particular service, might take an interest only in proceedings that directly concern that service.

⁴ An exception: Members and counsel can ask to be excluded from discussions of particular issues due to conflicts of interest. The FWCC sets up special email lists as needed to accommodate these requests.

Identifying the particular members behind a given pleading would add an extra layer to an already difficult consensus-building process.

If the FWCC instead had to provide a blanket list of all current members with each filing, more members would likely feel the need to publicly opt out. Some members have interests (or have affiliates with interests) in industries that may take positions different from the FWCC's. A requirement to list members would put these entities in an awkward situation, and in some cases would likely make it impossible for them to continue participation with the FWCC. A truthful and complete statement of interests, as in footnote 1, will suffice to prevent the abuses that concern the Commission, while letting the coalition function unimpaired.

The details of members' respective contributions to the FCC are not a matter of public concern, so long as all funding comes from entities listed in the statement of interests. Contributions are voluntary, as noted above, and sometimes vary among members from one year to the next as economic circumstances permit. We have no objection to required disclosure of funding from parties outside the statement of interests.

E. CONSTITUTIONAL RIGHTS

The First Amendment provides:

Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.⁵

The Constitution thus prohibits the Commission from adopting rules that hinder the operation of a coalition, such as the FWCC, whose members assemble for the purpose of presenting their combined views. The disclosure provisions suggested above will adequately serve the Commission's needs without unduly burdening the FWCC's constitutional rights.

⁵ U.S. CONST., amend I.

CONCLUSION

The Commission should not impose disclosure requirements on a constitutionally protected coalition beyond those needed to prevent misrepresentation.

Respectfully submitted,

A handwritten signature in black ink that reads "Mitchell Lazarus". The signature is written in a cursive style with a prominent initial "M".

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