

Before the
Federal Communications Commission
Washington DC 20554

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

The FWCC commented earlier on the Commission's proposed disclosure requirements in *ex parte* filings as they apply particularly to coalitions.³ The FWCC pointed out the risk of inadvertently interfering with the operation of coalitions that do not present any danger of pretense, thus burdening their constitutional rights as well as potentially depriving the

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*").

³ Comments of the Fixed Wireless Communications Coalition, filed June 16, 2011.

Commission of valuable industry commentary. The FWCC recommended that the Commission require a truthful and complete statement of interests and funding, which would consist of:

- 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.”

B. PARTICIPATION IN A COMMISSION PROCEEDING IS PROTECTED ACTIVITY UNDER THE FIRST AMENDMENT

The FWCC agrees with the U.S. Chamber of Commerce that participation in Commission proceedings is a form of First Amendment-protected political speech, as well as an exercise of the constitutional right to assemble and petition the government.⁴ We object to the startling argument made by Free Press that “no entities are *required* to comply with the rules – the rules apply only if and when an organization voluntarily chooses to file”⁵ Constitutional protections do not disappear merely because their exercise is voluntary. The government cannot burden these rights on the ground that a citizen can avoid the burden by not exercising the right.

To the contrary, a regulation affecting a constitutional right must take great care to burden its exercise as little as possible. The new rule must be justified with more than mere conjecture and must be narrowly tailored to advance the demonstrated government interest involved.⁶ The FWCC agrees with the U.S. Chamber of Commerce that failure to properly define the need for a regulation, as well as failure to appropriately tailor any remedy, would potentially

⁴ Comments of the U.S. Chamber of Commerce, filed June 16, 2011, at 6.

⁵ Comments of Free Press, filed June 16, 2011, at 8.

⁶ Comments of the U.S. Chamber of Commerce at 7-9.

violate not only the Constitution, but the Administrative Procedures Act and the Paperwork Reduction Act.⁷

C. A DISCLOSURE REQUIREMENT WOULD BURDEN COALITION MEMBERS

The FWCC strongly disagrees with Free Press’s assertion that a disclosure requirement “would not create significant burdens for any parties. Contributing organizations would face no burdens whatsoever.”⁸ This misses the point. For a coalition with no independent corporate identity, such as the FWCC, the burdens of the coalition *are* the burdens of its members, who bear all expenses and (at least in our case) contribute their own time and effort as well.

Furthermore, as the FWCC discussed in its comments, over-detailed disclosures can impair the functioning of the coalition by adding another layer onto the consensus-building process, namely, determining which members will be identified as actively supporting a particular proceeding. Some members may have interests (or affiliates with interests) in industries that occasionally take positions different from the FWCC’s. A requirement to list members and their financial contributions would put these entities in an awkward position and in some cases likely make it impossible for them to continue participation with the FWCC. Such a requirement would hamper members’ ability to coordinate with others and speak through a coalition.

Free Press goes on to state that the burden of a disclosure obligation would be “minimal” because no new filings would be needed, just “additional language.”⁹ We see no significant

⁷ 5 U.S.C. § 553 (p. 14-17); 44 U.S.C. § 3502(3) (p. 17), respectively.

⁸ Comments of Free Press at 8.

⁹ *Id.*

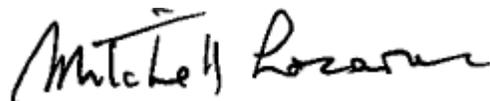
distinction between the time, money, and negotiation that would go into preparing “additional language” within a pleading and that spent preparing a separate filing.

Finally, the FWCC agrees with the U.S. Chamber of Commerce that all of the various suggested external disclosure models are more burdensome than required to satisfy the constitutional standard.¹⁰ Each was constructed for a specific purpose that has no application here. Rather, 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.

CONCLUSION

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

Respectfully submitted,



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¹⁰ Comments of the U.S. Chamber of Commerce at 9.