

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 1.17 of the) GC Docket No. 02-37
Commission’s Rules Concerning Truthful)
Statements to the Commission.)
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NOTICE OF PROPOSED RULE MAKING

Adopted: February 14, 2002

Released: February 22, 2002

Comment Date: 30 days after publication in the Federal Register

Reply Comment Date: 45 days after publication in the Federal Register

By the Commission:

1. By this notice of proposed rule making, we propose to amend section 1.17 of our Rules, 47 C.F.R. § 1.17, which relates to the submission of truthful statements to the Commission.

2. As currently written, the rule provides as follows:

1.17 Truthful written statements and responses to Commission inquiries and correspondence

The Commission or its representatives may, in writing, require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to some other matter within the jurisdiction of the Commission. No applicant, permittee or licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission.

Note: Section 1.17 is limited in application to written matter. It implies no change in the Commission's existing policies respecting the obligation of applicants, permittees and licensees in all instances to respond truthfully to requests for information deemed necessary to the proper execution of the Commission's functions.

3. In all of our proceedings, the Commission relies heavily on the truthfulness and accuracy of information submitted to us. If information submitted to us is incorrect, we cannot properly carry out our statutory responsibilities. It is our experience that the vast majority of persons dealing with the Commission understand their obligation to take the appropriate steps to ensure that the information they submit is accurate. Nevertheless, we believe that the scope of the current section 1.17 as written may reflect an unduly narrow articulation of the existing obligations of persons dealing with the Commission. It thus may hamper our ability to take enforcement action in those rare cases where persons dealing with the Commission do not exercise the requisite care to ensure that they submit accurate information. Accordingly, we propose to revise section 1.17 as follows: (1) to provide that the rule prohibits incorrect statements or omissions that are the result of an intent to deceive or negligence¹; (2) to make clearer that the rule covers statements made to the Commission in all contexts; (3) to include oral statements and not just written statements; and (4) to include all persons making statements to the Commission (e.g., including non-regulatees).

4. To implement these changes, we proposed to modify slightly the first sentence of the current rule, which merely codifies existing statutory requirements in sections 218, 308(b), 403, and other sections of the Act pertaining to the obligation to provide any required information. In addition, we modify the remainder of section 1.17 to set forth the obligation to provide truthful information. The new rule would read as follows:

§ 1.17 Truthful and accurate statements to the Commission

(a) The Commission or its representatives may, in writing, require written statements of fact relevant to the determination of any matter within the jurisdiction of the Commission.

(b) No person shall, in any written or oral statement of fact submitted to the Commission, intentionally or negligently provide incorrect material information or intentionally or negligently omit any material information bearing on any matter within the jurisdiction of the Commission.

By specifying that the rule prohibits both intentional and negligent statements and omissions, the proposed rule better conveys our view that the rule should have a broad scope. Licensees,

¹ We have previously held that a violation of the portion of the rule relating to omissions may occur in the absence of an intent to deceive. See The Curators of the University of Missouri, 16 FCC Rcd 1174 (2001).

regulatees, and others are responsible for using their best efforts and exercising care and diligence to ensure that, in all contexts, the information they provide is correct and accurate. Nevertheless, we seek comment on whether certain classes of proceedings (e.g., rulemakings or other non-adjudicatory proceedings not involving specific parties) should be subject to the rule only when deceptive intent is involved and whether persons or entities that are not regulated by the Commission should be subject to the rule only when deceptive intent is involved.

PROCEDURAL MATTERS

A. Ex Parte Rules -- Permit-but Disclose Proceeding

5. This is a permit-but-disclose notice-and-comment rulemaking proceeding. Ex parte presentations are permitted, except during any Sunshine Agenda Period, provided they are disclosed as set forth in 47 C.F.R. § 1.1206(b).

B. Regulatory Flexibility Certification

6. The Regulatory Flexibility Act of 1980, as amended (see 5 U.S.C. § 601 et seq.)² requires an initial regulatory flexibility analysis in a notice and comment rulemaking proceeding unless we certify 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). We believe that the rule we propose today will not have a significant economic impact on a substantial number of small entities.

7. In proposing to expand the scope of 47 C.F.R. § 1.17, we are merely requiring persons dealing with the Commission to submit accurate information. The proposed revised rule thus would not impose any significant compliance burden on persons dealing with the Commission, including small entities, or otherwise affect the rights of persons participating in Commission proceedings. The revised rule would simply enable the Commission to impose sanctions more effectively in those instances where people intentionally or negligently submit incorrect information. There is thus no reason to believe that operation of the revised rule would impose significant costs on parties to Commission proceedings.

8. Accordingly, we certify that the rule as proposed will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b). The Commission shall send a copy of this Notice of Proposed Rulemaking, including this certification, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. § 605(b). A copy of this certification will also be published in the Federal Register. Id.

² See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

C. Authority

9. Authority for this rulemaking is contained in 47 U.S.C. §§ 154(i), 154(j), 201(b), and 303(r).

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, That NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

11. IT IS FURTHER ORDERED, That pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested persons MAY FILE comments on or before **[30 days after publication in the Federal Register]** and reply comments on or before **[45 days after publication in the Federal Register]**. Comments may be filed using the Commission's Electronic Comment Filing System or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998). To file by paper, commenters must file an original and four copies of all comments, reply comments, and supporting comments. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition, commenters should file a copy of any such pleadings with the Office of General Counsel, Portals II, 445 12th Street, SW, Room 8-C723, Washington, D.C. 20554.

12. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, D.C. 20554. Copies of filings may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile (202) 863-2898. Filings may also be viewed on the Commission's Internet web site using the Electronic Document Filing System (ECFS) at http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or bmillin@fcc.gov. This NPRM can also be downloaded in Word or ASCII formats at <http://www.fcc.gov/ccb/cpd>.

13. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

14. For further information, contact David S. Senzel, (202) 418-1720, Office of General Counsel.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

Acting Secretary