

Communications Act of 1934, as amended. Nature and Extent of Confidentiality: If individual respondents to this survey wish to request confidential treatment of any data provided in connection with this survey, they can do so upon written request, in accordance with Sections 0.457 and 0.459 of the Commission's rules. To receive confidential treatment of their data, respondents need only describe the specific information they wish to protect and provide an explanation of why such confidential treatment is appropriate.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish annually a statistical report on average rates for basic cable service, cable programming service, and equipment. The report must compare the prices charged by cable operators subject to "effective competition" and those not subject to effective competition. The data needed to prepare this report is collected using the annual cable industry Price Survey.

**Marlene H. Dortch,**  
Secretary, Federal Communications  
Commission.

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## FEDERAL ELECTION COMMISSION

[Notice 2009-11]

### Advisory Opinion Procedure

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of New Advisory Opinion Procedures and Explanation of Existing Procedures.

**SUMMARY:** The Commission is establishing a program to allow persons requesting an advisory opinion, or their counsel, a limited opportunity to appear before the Commission. The purpose of their appearances is to answer questions from the Commission at the open meeting during consideration of the requestor's draft advisory opinion.

**DATES:** *Effective Date:* July 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Federal Election Commission is implementing a program allowing persons requesting advisory opinions, or

their counsel, to answer questions at the open meeting during consideration of an advisory opinion draft.

### I. Background

On January 14 and 15, 2009, the Commission held a public hearing on possible changes to a number of its policies, practices, and procedures, including possible changes to the advisory opinion process. Information about the hearing is available on the Commission Web site at <http://www.fec.gov/law/policy/enforcement/publichearing011409.shtml>. The Commission received several public comments regarding the advisory opinion process. One issue generating significant attention was whether advisory opinion requestors, or their counsel, should be allowed to appear before the Commission during the advisory opinion process. After reviewing the public comments, the Commission has decided to allow requestors, or their counsel, to appear at the open meeting during consideration of an advisory opinion draft. The specific procedures are explained below.

#### A. Existing Advisory Opinion Procedures

Any person may request an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), or Commission regulations, to a specific transaction or activity by the person.<sup>1</sup> See 2 U.S.C. 437f; 11 CFR part 112. Requestors or their counsel ("Requestors") must submit their request in writing. 11 CFR 112.1. The Commission, in turn, must issue an advisory opinion within 60 days of receiving a complete advisory opinion request. 2 U.S.C. 437f(a)(1). The 60-day deadline is reduced to 20 days when a Federal candidate or a candidate's authorized committee submits a complete request within 60 days of a Federal election. 2 U.S.C. 437f(a)(2). At times, the Commission expedites certain highly significant, time-sensitive requests and issues these advisory opinions within 30 days. See *infra* Section II(E). Advisory opinions are issued if approved by at least four Commissioners.

Members of the public have two distinct opportunities to participate in the advisory opinion process. First, they may submit written comments on the advisory opinion request, which is released to the public and posted on the

Commission's Web site as soon as it becomes complete. 11 CFR 112.2; 112.3. Second, they may submit written comments on a draft advisory opinion, which typically is provided to the Requestor and made available to the public prior to the Commission meeting at which the advisory opinion will be considered.

#### B. Proposed Revisions to the Advisory Opinion Process

At the public hearing held on January 14 and 15, 2009, those commenters who addressed the advisory opinion process generally agreed that the Requestor should be allowed to appear before the Commission when the Commission considers the advisory opinion draft. The main concern with the existing advisory opinion process was the Requestor's inability to respond to Commissioners' questions during the open meeting. The commenters noted that when they represented Requestors, they sometimes found it frustrating to sit in the audience during the open meeting when the Commission was considering their request, with no opportunity to respond when Commissioners raised questions. To address this concern, the Commission is implementing a new procedure that would allow Requestors to appear before the Commission to answer questions at the open meeting when the Commission considers the Requestor's draft advisory opinion.

The Commission believes that this procedure will promote transparency and fairness, while ensuring that advisory opinions continue to be issued in an efficient and timely manner. It would permit the Requestors to answer directly Commissioners' questions. These appearances may clear up ambiguous or conflicting statements in the Requestors' written submissions or allow the Commission to obtain additional information where the Requestor's previous discussions with Office of General Counsel ("OGC") attorneys did not provide an answer. Allowing Requestors to appear would help ensure that the Commission fully considers all significant aspects of the proposed transaction or activity before voting on the advisory opinion. Appearances by Requestors may also help some Requestors to understand better the basis for the Commission's decision.

Some commenters suggested that the Commission should hold formal oral hearings on advisory opinion requests, similar to the probable cause hearings the Commission holds in enforcement matters, before it considers and votes on draft advisory opinions. See Procedural

<sup>1</sup> The Act defines "person" as an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. 431(11).

Rules for Probable Cause Hearings, 72 FR 64919 (Nov. 19, 2007). The Commission believes that a broader opportunity for an oral presentation is not needed and would prove unworkable within the short statutory deadlines for issuing advisory opinions. These 60- and 20-day statutory deadlines preclude more extensive oral hearings at an earlier point in the process. The Commission would have to devote significant resources to arranging and preparing for oral presentations, thereby reducing the already limited time available for drafting and considering opinions responding to advisory opinion requests. While extensions may be arranged if necessary, as the Commission has done in the past, allowing extensions on a regular basis could undermine the statutory directive to issue advisory opinions within 60 or 20 days. Furthermore, because Requestors already have multiple opportunities to participate in the advisory opinion process, an additional oral hearing would not significantly benefit them or the advisory opinion process.

One commenter at the public hearing suggested that third-party commenters in the advisory opinion process should be allowed to appear before the Commission; other commenters disagreed. The Act specifically provides that the Commission shall issue an advisory opinion "with respect to a specific transaction or activity by the person" who submitted the request. 2 U.S.C. 437f(a)(1). Accordingly, under the new program, third-party commenters would not be allowed to make oral presentations. Requestors would be permitted to appear only for the limited purpose of addressing questions raised by the Commission. Commenters already have an opportunity to submit written comments on the request, as well as on the draft advisory opinion. Moreover, arranging an oral hearing within the 60- or 20-day statutory deadlines for all interested parties who wish to testify would be inefficient and impractical.

Another issue raised at the public hearing was whether the Commission should transcribe oral presentations if it allowed Requestors to appear. The Commission currently does not transcribe open meetings, and the Commission does not intend to change this practice when Requestors or their counsel make an appearance, for two reasons. First, the transcripts would be an expense to the Commission while offering little added benefit to the Requestor. Second, the Commission already has podcasts of its open

meetings available on the Commission Web site.

#### *C. Notice of Intent To Appear Before the Commission*

Requestors wishing to appear before the Commission to answer questions regarding their advisory opinion request shall have the opportunity to do so. Requestors must submit a written notice to the Commission in advance indicating that they will be available to respond to questions at the open meeting at which the advisory opinion request is to be considered. The notice must be received by the Office of the Commission Secretary ("OCS") by e-mail, hand delivery, or fax no later than 48 hours prior to the scheduled open meeting. Requestors are responsible for ensuring that OCS timely receives the notice. In the event any advisory opinion draft response is not made available to the public and to the Requestor within one week (3 days for requests under the 20-day expedited procedure) prior to the Commission open meeting at which the advisory opinion request is to be considered, the Requestor shall have an automatic right to appear before the Commission, and no advance notice shall be required. *See infra* Section I(E).

The opportunity to appear before the Commission does not guarantee that Requestor will be able to address the Commission if no Commissioners have any questions of the Requestor. These appearances are voluntary, and no adverse inferences will be drawn if Requestors do not appear.

#### *D. Open Meeting Procedures*

Requestors who appear before the Commission shall take a seat at the witness table during consideration of their advisory opinion and respond to any questions Commissioners may have. Requestors who are unable to appear physically at an open meeting may participate remotely, subject to the Commission's technical capabilities. To ensure availability, Requestors wishing to participate remotely are advised to notify the OCS when they submit their notice of intent to appear.

Requestors' appearance is limited to answering Commissioners' questions; it is not an opportunity for Requestors to make extended oral presentations. The Commissioners, the General Counsel, and the Staff Director may ask Requestors questions appropriate or relevant to answering the advisory opinion request at hand. Commissioners also may ask the General Counsel and the Staff Director questions pertaining to the request. Any factual representations made at the open meeting will be

considered definitive in the formulation of a final advisory opinion.

#### *E. Improving Transparency and Timeliness of Advisory Opinion Procedures and Opportunity for Comment*

In an effort to streamline the advisory opinion request process and to improve transparency and meaningful opportunity for public comment and Commission consideration of such comments, the Commission informally has implemented several procedures and proposes additional procedures, explained below.

#### *Commission Self-Imposed Deadline for Draft Responses*

In 1993, the Commission announced pilot procedures that would result in advisory opinion drafts to be made public for comment as soon as they are circulated to the Commission, and generally no later than close of business on the Thursday preceding the Commission's next open meeting at which the advisory opinion request is to be considered (generally the following Thursday). *See* Revision to Advisory Opinion Comment Procedure, 58 FR 62259 (Nov. 26, 1993). The timetable was to remain in effect for all advisory opinion requests received until May 31, 1994 and did not apply to expedited requests under 2 U.S.C. 437f(a)(2) and 11 CFR 112.4(b). *See infra*.

In this same spirit, for all advisory opinion requests subject to the 60-day deadline, the Commission will provide at least one draft response to the Requestor and the public no later than one week prior to the Commission open meeting at which the advisory opinion will be considered. This timetable will provide Requestors adequate time to decide whether to submit a notice to the Commission to appear at the meeting, as well as provide the public meaningful opportunity to submit comments on the draft and for the Commission to properly consider any such comments. For requests subject to the 20-day deadline, *see infra*, this timetable shall be shortened to provide a draft response no later than three business days prior to the open meeting at which the advisory opinion will be considered.

The Commission notes that, prior to the open meeting, additional advisory opinion draft responses may be produced after the initial draft(s) is released publicly. The Commission will make available to the public and to Requestors any and all additional draft responses as soon as possible. In the event any draft response is not released publicly until after the one-week/three-day deadlines, Requestors shall have an

automatic right to be heard at the meeting (limited to answering the Commissioners' questions, if any). See *supra* Section I(C).

The timetable described above is in addition to the existing 10-day deadline for accepting written public comments following the date the advisory opinion request is made public. See 2 U.S.C. 437f(d).

#### Expansion of 20-Day Expedited Process in Section 112.4(b) to Other Requestors

The Commission has an expedited procedure provided for in 2 U.S.C. 437f(a)(2) and implemented in 11 CFR 112.4(b) for certain advisory opinions. This expedited procedure is currently limited to any candidate or candidate's authorized committee that: (1) Submits a request within 60 calendar days preceding the date of an election for Federal office; (2) presents a specific transaction or activity related to the election; and (3) explains in the request the electoral connection. The Commission recognizes that this procedure does not apply to other entities or individuals, and in recognition of this will attempt to apply an expedited schedule to any entity or individual who, within 60 calendar days preceding the date of an election for Federal office, submits an advisory opinion request pertaining to a proposed public communication referencing a clearly identified Federal candidate.

The Commission notes that this new practice with respect to election-sensitive requests is in addition to the Commission's current, informal practice of expediting certain highly significant time-sensitive requests (whether or not relating to an upcoming election). The Commission endeavors to issue advisory opinions within 30 days under this general expedited process.

#### Withdrawal of Advisory Opinion Requests

A Requestor may withdraw an advisory opinion request at any time prior to the Commission vote on the request. Such withdrawal may be done in writing or on the record in the event a Requestor appears before the Commission.

#### Summary of Advisory Opinion Timetable

The following is a summary of the advisory opinion timetable, as modified by this program:

(1) Requestor submits advisory opinion request.

(2) Within 10 days of the submission of the request, OGC determines whether

the request is "complete" and "qualified."

(3) The Commission shall provide 10 days for accepting written public comments on the advisory opinion request after the request is released to the public.

(4) One week prior to the open meeting at which the advisory opinion is to be considered (three days for expedited requests), the Commission will provide at least one draft response to the Requestor and the public for comment.

(5) Requestor may submit a notice indicating that they will be available to respond to questions from the Commission no later than 48 hours prior to the open meeting at which the advisory opinion is to be considered.

(6) In the event subsequent advisory opinion draft responses are made available to the public and Requestor after one week (or three days for 20-day expedited requests) prior to the open meeting at which the advisory opinion is to be considered, the Requestor shall have an automatic right to appear before the Commission.

## II. Program Implementation

The new procedures for Requestors to appear before the Commission described in Sections I(B) through (D), *supra*, shall be in effect immediately upon the publication of this notice. The Commission will evaluate the new procedures and consider whether the procedures should, by an affirmative four votes of the Commission, be discontinued or modified. After one calendar year, the program will continue as a pilot program until such time that the Commission either terminates it by an affirmative four votes or makes it permanent by an affirmative four votes.

Dated: June 30, 2009.

On behalf of the Commission,

**Steven T. Walther,**

*Chairman, Federal Election Commission.*

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## GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0281]

### National Capital Region (NCR), Office of Child Care Services; Submission for OMB Review; General Services Administration (GSA) Child Care Specialist Feedback Form

**AGENCY:** NCR Office of Child Care Services, Public Buildings Service (PBS), GSA.

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement. This information will be used to assess satisfaction with services delivered by staff from the Office of Child Care Services. The respondents are current users of the Office of Child Care Services. A request for public comments was published in the **Federal Register** at 74 FR 7065, February 12, 2009. No comments were received.

*Public comments are particularly invited on:* Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before: August 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Leo G. Bonner, Regional Child Care Coordinator, Office of Child Care Services, at telephone (202) 401-7403 or via e-mail to [leo.bonner@gsa.gov](mailto:leo.bonner@gsa.gov).

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090-0281, General Services Administration (GSA) Child Care Specialist Feedback Form, in all correspondence.

#### SUPPLEMENTARY INFORMATION:

##### A. Purpose

This information will be used to assess consumer satisfaction with services delivered by staff from the Office of Child Care Services.

##### B. Annual Reporting Burden

*Respondents:* 144.

*Responses per Respondent:* 1.

*Hours per Response:* .083 (5 minutes).

*Total Burden Hours:* 12.

*Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from