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Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Sir:

This law firm offers the following comments with respect to proposed 10 CFR §§2.719, 2.780 concerning ex parte communications. 44 Fed. Reg. 12428 (March 7, 1979).

We find the definition of "ex parte communication" set forth in proposed 2.780(b) confusing and poorly drafted. The new rule appears to forbid, with certain specific exceptions, communications which are (1) not made on the public record, and (2) not made with reasonable notice to "all participants." The requirement that all communications be made on the record appears overbroad. This would interfere with conference calls and other informal conferences where the Licensing Board and all parties are represented but no public record is kept. Such conferences are useful and as long as all parties are represented there is no need to require the constant attendance of a court reporter. A better definition of ex parte communication would resemble that implicit in the Administrative Procedure Act, 5 U.S.C. §554(d), that is, the term would be limited to those communications made without notice and opportunity for all parties to participate.

A second problem with the proposed definition is that it states that reasonable prior notice must be given to "all participants in the proceeding." This could be interpreted to include persons who make limited appearance



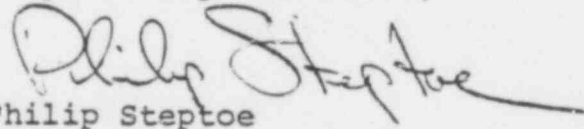
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statements. See 10 CFR §2.715. But giving notice to all such persons prior to any communications would of course be administratively impracticable. We suggest that the word "participants" be changed to "parties."

Finally, we suggest that the specific exception provided in proposed 10 CFR §2.780(b)(5) for communications between the Commission and the staff in respect of generic issues be broadened to include parties other than the staff. There seems to be no reason why other parties should be restricted in communicating their views on generic issues to the Commission. For this limited exception, as opposed to the general definition of 10 CFR §2.780(b), a requirement that all communications be on the public record would be appropriate.

Respectfully submitted,



Philip Steptoe

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