

BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION

**Media Coverage Plan for Formal Hearings of the
Alabama Public Service Commission**

INFORMAL DOCKET U-5329

Comments from the Alabama Press Association, Alabama Broadcasters Association and AL.com

Consistent with the March 5, 2020, Order of Interim Adoption, the Alabama Press Association (“APA”), the Alabama Broadcasters Association (“ABA”) and AL.com provide the following Comments:

About the Commenters

The APA is one of the oldest trade associations in the state of Alabama. It consists of 24 daily newspapers and 99 nondaily newspapers. It represents the newspaper industry before the state legislature focusing on government access laws. The ABA represents radio and television stations across the State of Alabama. ABA members are uniquely impacted by restrictions of broadcasting the audio or video images of public meetings. AL.com is Alabama’s #1 digital media site covering in-depth news, special interest stories, college football and everything else about living in Alabama, accessible via desktop, social media, and mobile apps.

The History of Open Meetings and the Alabama Public Service Commission

The Alabama Public Service Commission was created by the legislature and granted exclusive authority with respect to utility rates and service regulations. ALA. CODE § 37-1-31. The mission of the PSC is to ensure a regulatory balance between regulated companies and consumers. Accordingly, the PSC is designed to serve the interests of the people of Alabama.

The Alabama Public Service Commission has been required to hold open formal meetings since the original Sunshine Law passed in the early 1900s. *See*, former section 13A-14-2 (specifically naming the Public Service Commission as being subject to the Sunshine Law). The 2005 Open Meetings Act applies to “Governmental Bodies” and defines them to be “All...commissions of the executive and legislative departments of the state....” ALA. CODE § 36-25A-2(4). Indeed, the Public Service Commission is specifically mentioned in the Open Meetings Act as a body that cannot conduct meetings or votes by electronic communications, meaning the members have to be

physically present in Montgomery for meetings to be held. ALA. CODE § 36-25A-5.1. Thus, from the original Sunshine Law, to the Open Meetings Act of 2005, the Alabama legislature has consistently recognized, and specifically called out, the importance of the public's access to the meetings held by the Alabama Public Service Commission. And this is not surprising as it has long been the policy of the State of Alabama that the deliberative process of governmental bodies, like the Alabama Public Service Commission, shall be open to the public.

The enabling legislation of the Public Service Commission requires open meetings and records. A "public information officer" is required to give notice of monthly meetings at least a week prior to meetings. ALA. CODE § 37-1-8. The records of those meetings "shall be open at all times to the inspection of the public." *Id.* The Public Service Commission's meetings must be open. This is obvious, not only from the Commission's longstanding tradition of conducting open meetings, but also from the statutory requirement of notice to the public and keeping open records of the proceedings.

Objections to the Proposed Media Coverage Plan For Formal Hearings

The membership of the APA, ABA and AL.com strongly object to the apparent intent of the proposed media plan to subject the ability to photograph or broadcast formal proceedings to the discretion or whims of any party, witness or commissioner at a formal meeting. The APA, ABA and AL.com wholly reject the premise in paragraph 1 of Appendix A containing the media coverage plan. The premise is that broadcasting, recording or photographing of the Alabama Public Service Commission must be done in compliance with the Alabama Canons of Judicial Ethics. We have not been able to find any case or statute that indicates that the Canons of Judicial Ethics apply to the Public Service Commission or that the Public Service Commission is authorized to adopt the Canons of Judicial Ethics procedures even when they conflict with the Open Meetings Act. The attempt to rely on the Canons of Judicial Ethics without any reasonable basis for doing so strongly indicates that the goal of the plan is to suppress wider public scrutiny of its actions in statutorily mandated public meetings.

As noted previously, the Public Service Commission is clearly subject to the Open Meetings Act. ALA. CODE § 36-25A-1A, et. seq. Specifically, that Act requires that "A meeting of a governmental body, except while in

executive session, may be openly recorded by any person in attendance by means of a tape recorder or any other means of silent photographic or video reproduction, provided the recording does not disrupt the conduct of the meeting. The governmental body may adopt reasonable rules for the implementation of this section.” ALA. CODE § 36-25A-6 (emphasis added). The proposed media coverage plan as currently written does not comply with the stated policy in the foregoing section. Specifically, Paragraphs 3 and 4 of the proposed media coverage plan indicate that all parties have to agree before the media will be allowed to record, broadcast, or photograph formal meetings of the Alabama Public Service Commission. Furthermore, in Paragraph 18 of the media plan, it is stated that any party, witness, attorney, commissioner or presiding administrative law judge can order the cessation of coverage of a proceeding. This veto power places unprecedented authority in the hands of a select few persons and is clearly meant to suppress public scrutiny based on a single vote. In other words, broadcasting will be prohibited only when everyone involved in the hearing agrees there will be broadcasting. Such a condition flies in the face of the Open Meetings Act.

The paragraphs of the proposed media plan referenced in these comments are not consistent with the clear statement in the Open Meetings Act that a meeting may be openly recorded by any person present using any means of silent photographic or video reproduction in a manner that does not disrupt the conduct of the meeting. The Alabama Public Service Commission does not have the authority to pass regulations or media plans that are contrary to Alabama law. “[L]ike all statutory creations granted authority in derogation of common law, it has only the authority granted upon a strict construction of the statute creating it.” Boswell v. Whatley, 345 So. 2d 1324, 1328 (Ala. 1977) (Actions of Public Service Commission found to be outside the Commission’s authority). The proposed media plan cites no statutory authority for it exercising the alleged right to prohibit individuals who are not disrupting the meeting from recording it in any fashion. Also, paragraph 14 of the proposed media plan directly contravenes ALA. CODE § 36-25A-6 by not allowing any live audio or video broadcasting or social media updates from inside the hearing room. There is nothing in the Alabama statutes on public meetings that prohibits recordings from being broadcast live. Again, the Alabama Public Service Commission does not have legal authority

to regulate in contravention of the Open Meetings Act. The Open Meetings Act allows recording and does not grant other persons present to have the ability to halt video or audio recordings which are not disruptive.

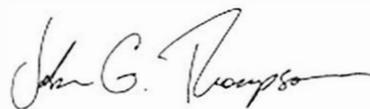
While the Alabama Public Service Commission has the authority to adopt reasonable rules and regulations prohibiting meeting disruption in accordance with the mandate that allows recording of meetings, it does not have the authority to prohibit the recording of meetings. Many of the regulations of the proposed media coverage plan do provide reasonable rules and regulations relating to the recording of proceedings. But adopting the Alabama Judicial Canons of Ethics as authority for a right to cease or prohibit broadcasting without the full consent of all parties to proceedings is not supported by any statute the authors of these comments have been able to find. So, on behalf of these media associations, we strongly urge you to revamp your proposed media plan in light of the fact that the Open Meetings Act requires the Commission to allow any person attending its formal meetings to record and broadcast from them as long as it does not disrupt the proceedings.

Respectfully submitted this 31st day of March, 2020.



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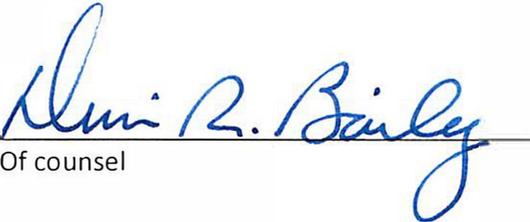
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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2020, a copy of the foregoing was served upon the following by electronic mail and/or placing a copy of same in the United States Mail, postage prepaid and handdelivered the original and 10 copies to:

Mr. Walter L. Thomas, Jr., Secretary
Alabama Public Service Commission
PO Box 304260
100 North Union Street, Suite 950
Montgomery, AL 36130-4260


Of counsel