

Suggestions for Improving the FCC's Practices and Procedures: Some Ways of Enhancing Efficiency, Transparency, Good Government, and Employee Morale

The recommendations noted below expand upon the suggestions previously made by others. They also reflect my years of service as a staff attorney at the FCC.

I. At the Legislative Level

- A. To improve communications among Commissioners and further debate on important policy matters, the Government in the Sunshine Act should be amended to allow all Commissioners to meet in private with the caveat that the “minutes” of such a meeting be released to the public soon thereafter.
- B. To ensure an opportunity for change at the FCC, Commissioners should be prohibited from serving more than five years at the agency (no renominations). Individuals not affiliated with either of the major political parties should also be permitted to serve on the FCC.
- C. To ensure that the FCC clearly understands the industries it regulates, Commissioners should have a modicum of experience in the business sector (preferably in the law, technology, economic, or intellectual property fields) before being nominated to serve at the agency.
- D. To formally recognize the importance and authority of the position, the General Counsel of the FCC should be nominated by the President and confirmed by the Senate.

II. At the Agency Level

- A. The FCC should terminate all proceedings more than five years old. New dockets should be established if outstanding issues remain. New comments and reply comments should be solicited to update the record.
- B. The FCC should contemporaneously publish all items adopted at an open meeting. The post-adoption edit system (“BARF”) should be terminated.
- C. The FCC should formally establish a “shot clock” rule to act on all items on circulation.
- D. Notices of Proposed Rulemakings should *always* include draft rules.
- E. The FCC should consider engaging in more negotiated rulemakings as a means to settle controversial issues and avoid prolonged litigation.

- F. The FCC should forcefully exercise its Section 403 authority (“Inquiry by Commission On Its Own Motion”) when evidence on the record in a rulemaking is lacking.
- G. The FCC should purge the Code of Federal Regulations of all outdated rules and requirements. For example, Section 76.209 of Title 47, “Fairness doctrine, personal attacks, political editorials” is still on the books, but should be rescinded.
- H. All Commission items subject to “peer review,” as that concept is explained and established by the Office of Management and Budget in 2005, should be examined by either a formal advisory committee designated by the FCC or another independent expert, but not by current FCC employees.
- I. All factual, legal, and technical reports required by statute, requested by Congress, or made part of an ongoing docketed proceeding should be reviewed and approved by each Commissioner.
- J. Significant FCC items should not be released in either August or December or whenever the majority of those parties affected by an FCC action are unavailable or away from the office.
- K. On controversial issues of public importance, the FCC should give at least two months for interested parties to file comments and at least two months to file reply comments (unless a timetable is otherwise established by statute).
- L. Section 76.6 of the Commission’s rules, the general pleading requirements for cable service complaints, should be strictly enforced (*i.e.*, “Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.”) This requirement should be expanded to encompass all complaints and petitions filed with the FCC.
- M. Ex parte meetings should be restricted in permit-but-disclose proceedings. They should only be allowed for purposes of gathering information relevant to a Notice of Inquiry and/or before a Notice of Proposed Rulemaking is published in the Federal Register. If the Commission finds it necessary to engage in further fact-finding or better understand complicated legal issues after an NPRM is published, it should hold hearings open to the public that everyone can attend at the same time.

- N. Each Commissioner should hire a technology advisor and an economics advisor in addition to a legal advisor.
- O. Authors of items circulating in the Commissioners' Offices, or scheduled for a vote at an open meeting, should be able to attend all 8th floor meetings on that item.
- P. Names of staffers who attend outside events where interaction with regulated entities may occur, such as conventions, should be released to the public upon request.

III. At the Bureau/Office Level

- A. Each Bureau should make public a list of "delegated authority" items awaiting action.
- B. Each Bureau Chief should also establish a monthly open meeting to consider and dispose of important items pending in the Bureau.
- C. All special relief petitions, and related pleadings, filed before the Media Bureau should be posted on the FCC's website.
- D. The Office of Strategic Planning should hire professionals with expertise in the social sciences to gauge the impact new communications technologies have on consumers and society.
- E. The Enforcement Bureau should be dismantled and its functions redistributed to each of the existing Bureaus. This will permit the Bureaus that establish policy and draft rules for certain industries, and have intimate knowledge of the subject matter, to also enforce those same rules in a consistent manner.

IV. At the Staff Level

- A. In light of the imminent retirement of dozens of career employees, the FCC should plan to hire several new attorneys and other professionals to ensure that the agency is fully staffed in the years ahead. New law school graduates should be encouraged to apply for open positions.
- B. Each Bureau and Division should be allowed to exercise independent hiring authority.
- C. The FCC should make it a priority to hire new staffers with diverse backgrounds, experiences, and skill sets. These hires should not all come from the same university, law firm, or line-of-business.

- D. The FCC should establish a program to pay off student loan debt for those staffers who have spent five years or more at the Commission. This measure will provide an incentive for professional staff to stay at the Commission rather than leave for the private sector.
 - E. The FCC should consider pay schedules outside of, and apart from, the Federal government GS system. The Commission should provide novel monetary incentives in order to maintain a highly skilled and knowledgeable work force.
 - F. The FCC University staff training program, initially established under Chairman Powell, should be reinstated, expanded, and sufficiently funded.
 - G. Staffers should be encouraged to volunteer to be detailed to other Federal agencies or departments, such as the FTC or the Department of Justice, for a limited period of time. The experience of learning how other governmental bodies operate is an extremely valuable teaching tool. The staffer could then return to the FCC with new suggestions on how to operate an agency in a different, and perhaps better, manner.
 - H. Staffers should be encouraged to participate, as expert speakers, in all types of academic seminars or other educational opportunities.
 - I. Staffers should be permitted to speak with Hill staffers and the press, if authorized to do so by the Office or Bureau Chief.
- V. At the Operational Level
- A. The FCC should consider vacating the Portals and move back to M Street or another central location in the District of Columbia. This measure will certainly boost employee morale.
 - B. The FCC should radically redesign its website to make it more useful to the public. It should hire outside consultants and engage in focus groups to make it more manageable, efficient, and workable.