

THE RULEMAKING PROCESS

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Rulemaking and Procedures

- Congressional statutes created the FCC and delegated authority to the agency in the telecommunications space
- The FCC is tasked with creating the more specific rules and regulations that service the goals outlined in statutes
- These rules and regulations are (usually) adopted through the following process:
 - Notice of Proposed Rule [NPRM] → Comment and Review Process → Adoption of Order and final rules. In addition, the agency sometimes issues a Notice of Inquiry, which is more general in nature, before issuing the NPRM.
- Administrative Procedure Act (APA)
 - The APA is a statute setting forth rulemaking procedures with which all federal agencies must comply
 - Requires agencies to provide public with adequate notice of proposed rule followed by opportunity for comment
 - Requires publication in the Federal Register (both notices of proposed rules and adoption of final rules)

How an Idea Becomes a Rule Part 1

- Notice of Inquiry (NOI)
 - Unlike a Notice of Proposed Rulemaking (NPRM), an NOI is not required under the APA before adopting final rules. But, an NOI can be helpful to gather information and ideas from the public.
 - Issued to seek public input on a particular topic or issue and provides an opportunity for stakeholders to contribute to FCC decision-making processes
- Interested parties can submit comments, research, and data related to the inquiry
 - Input may address challenges, opportunities, and potential regulatory approaches
- FCC evaluates the information gathered from public input, research, and other sources
 - Analysis may involve assessing the impact of current regulations, identifying emerging trends, and/or evaluating the need for new regulations
- FCC may use the findings from the NOI to inform future rulemakings, policy decisions, or regulatory changes
 - The outcome may include reports, recommendations, or proposed actions based on the inquiry's findings

How an Idea Becomes a Rule Part 2

- Notice of Proposed Rulemaking (NPRM):
 - Proposal of new rules or changes to existing rules (along with an explanation of what the rules mean and the rationale for them)
 - Public input is invited through comments and reply comments
- Comment Period:
 - Individuals, organizations, and stakeholders can submit comments supporting or opposing the proposed rules
 - Responses to comments (reply comments) can also be submitted
- Rule Adoption:
 - FCC reviews comments and may revise the proposed rules based on feedback
- Final rules are adopted in an Order and published in the Federal Register, and become effective after a specified period, typically 30 to 60 days after publication in Federal Register. (Some rules take longer to become effective if they need review and approval by OMB due to paperwork requirements.)

Appeals of Final Orders

- Appeal
 - Petitions for Reconsideration. Interested persons may appeal final actions to the Commission within 30 days, but such appeals cannot be based on facts or arguments not previously presented except in very limited situations (e.g. changed circumstances). The filing of a petition for reconsideration is not a condition precedent to judicial review, and does not postpone the enforcement of the Order and rules about which the petition has been filed.
 - Judicial Appeals. An affected party can appeal the FCC's adoption of final rules to a United States Court of Appeals (with a subsequent review possible before the Supreme Court of the United States)
 - Typical types of challenges include:
 - Did agency comply with procedural requirements of the APA (e.g., provide adequate notice)?
 - Did agency exceed authority delegated to it by Congress (often turns on question of statutory interpretation)?
 - Did agency engage in reasoned decision-making (e.g., internally consistent; consideration of alternatives; consideration of the record)?