

The Federal Communications Commission: Current Structure and Its Role in the Changing Telecommunications Landscape

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Summary

The Federal Communications Commission (FCC) is an independent federal agency with its five members appointed by the President, subject to confirmation by the Senate. It was established by the Communications Act of 1934 (1934 Act) and is charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. The mission of the FCC is to ensure that the American people have available—at reasonable cost and without discrimination—rapid, efficient, nation- and world-wide communication services, whether by radio, television, wire, satellite, or cable.

Although the FCC has restructured over the past few years to better reflect the industry, it is still required to adhere to the statutory requirements of its governing legislation, the Communications Act of 1934. The 1934 Act requires the FCC to regulate the various industry sectors differently. Some policymakers have been critical of the FCC and the manner in which it regulates various sectors of the telecommunications industry—telephone, cable television, radio and television broadcasting, and some aspects of the Internet. These policymakers, including some in Congress, have long called for varying degrees and types of reform to the FCC. Most proposals fall into two categories: (1) procedural changes made within the FCC or through congressional action that would affect the agency's operations or (2) substantive policy changes requiring congressional action that would affect how the agency regulates different services and industry sectors. Nine bills have been introduced during the 112th Congress that would change the operation of the FCC.

For FY2013, the FCC has requested an increase of $7 million in its appropriated budget to $432 million, including $85 million from auction receipts and $347 million from regulatory fees. The FY2012 budget is included in P.L. 112-74, the Consolidated Appropriations Act, 2012 (H.R. 2055), which was signed by President Obama on December 23, 2011. The budget provides $339,844,000 for agency salaries and expenses with no direct appropriation (all funding will be obtained through the collection of regulatory fees). This is a decrease of $16,790,000 from the FY2011 budget.

The FCC's budget is derived from regulatory fees collected by the agency rather than through a direct appropriation. The fees, often referred to as "Section (9) fees," are collected from license holders and certain other entities (e.g., cable television systems) and deposited into an FCC account. The law gives the FCC authority to review the regulatory fees and to adjust the fees to reflect changes in its appropriation from year to year. It may also add, delete, or reclassify services under certain circumstances.

There are currently nine bills under consideration in the House and Senate that would affect the operations of the FCC: H.R. 1009, H.R. 2102, H.R. 2289, H.R. 3309, H.R. 3310, S. 611, S. 1780, S. 1784, and S. 1817. These are discussed in more detail in the body of the report.

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FCC-Related Congressional Action—112th Congress[1]

One hearing has been held on Federal Communications Commission (FCC) oversight. Nine bills have been introduced in the 112th Congress that would affect the manner in which the FCC conducts its business.

Hearings

On February 16, 2012, the House Committee on Energy and Commerce Subcommittee on Communications and Technology held a hearing on the budget and spending of the FCC.[2] FCC Chairman Julius Genachowski; Mr. David H. Hunt, FCC Inspector General; and Mr. Scott Barash, Chief Executive Officer of the Universal Service Administrative Company, testified.

Legislation

Cost-Benefit Analysis of Proposed Rulemaking

FCC Analysis of Benefits and Costs Act of 2011 (H.R. 2289)

- **H.R. 2289 Status.** H.R. 2289, also called the "FCC ABCs Act," was introduced by Representative Robert Latta in the House Committee on Energy and Commerce on June 22, 2011. The bill was referred to the Subcommittee on Communications and Technology June 22, 2011.
  H.R. 2289 Summary. This bill would require the Federal Communications Commission (FCC) to include in each notice of proposed rule making and in each final rule issued by the FCC an analysis of the benefits and costs of such proposed rule or final rule. It would prohibit any appropriations for the express purpose of carrying out this act.

Commission Collaboration

Federal Communications Commission Process Reform Act (H.R. 3309)
Federal Communications Commission Process Reform Act (S. 1784)
Telecommunications Jobs Act (S. 1817)

- **H.R. 3309 and S. 1784 Status.** H.R. 3309 was introduced by Representative Greg Walden in the House Committee on Energy and Commerce on November 2, 2011, and was placed on the Union Calendar on March 19, 2012.[3] On March 26,

[1] The 110th Congress assigned responsibility for FCC appropriations process to the Subcommittee on Financial Services within the Committee on Appropriations, where has remained.

[2] Information about this hearing, including a video of the hearing, is available at http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=9278.

[3] H.Rept. 112-414 is available at http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt414/pdf/CRPT-112hrpt414.pdf.

2012, the House Committee on Rules reported to the House H.Res. 595,[4] "Providing for consideration of the bill (H.R. 3309) to amend the Communications Act of 1934 to provide for greater transparency and efficiency in the procedures followed by the Federal Communications Commission." The rule would provide for consideration of H.R. 3309 with one hour of general debate and waive all points of order against the bill and the amendments printed in the report. On March 26, 2012, the bill was placed on the House Calendar No. 121. S. 1784 was introduced by Senator Dean Heller in the Senate Committee on Commerce, Science, and Transportation on November 2, 2011.
H.R. 3309 and S. 1784 Summary. This bill would require the FCC to (1) survey the state of the marketplace through a notice of inquiry before initiating every new rulemaking; (2) identify a market failure, consumer harm, or regulatory barrier to investment before adopting "economically significant" rules, as well as demonstrate that the benefits of the regulation outweigh the costs; (3) make the full text of a rule available to the public for 30 days of comments and 30 days of reply comments prior to voting on the proposed rule, and issue a final rule within three years; and (4) set "shot clocks" for orders, decisions, reports, or actions.

- **S. 1817 Status.** S. 1817 was introduced by Senator Dean Heller in the Senate Committee on Commerce, Science, and Transportation on November 8, 2011.
  S. 1817 Summary. This bill is substantially similar to S. 1784.

Federal Communications Commission Collaboration Act (H.R. 1009)

- **H.R. 1009 Status.** H.R. 1009 was introduced by Representative Anna Eshoo in the House Committee on Energy and Commerce on March 10, 2011. The bill was referred to the Subcommittee on Communications and Technology on March 15, 2011.
  H.R. 1009 Summary. This bill would amend the Communications Act of 1934 to allow, notwithstanding a specified open meeting provision, three or more commissioners of the Federal Communications Commission (FCC) to hold a meeting that is closed to the public to discuss official business if (1) no agency action is taken; (2) each person present is an FCC commissioner or employee; (3) for each political party of which any commissioner is a member, at least one commissioner who is a member of the respective party is present, and, if any commissioner has no party affiliation, at least one unaffiliated commissioner is present; and (4) an attorney from the FCC's Office of General Counsel is present. It would require public disclosure of the meeting, attendees, and matters discussed.

Report Consolidation and Paperwork Reduction

Federal Communications Commission Consolidated Reporting Act (H.R. 3310)
Federal Communications Commission Consolidated Reporting Act (S. 1780)

- **H.R. 3310 and S. 1780 Status.** H.R. 3310 was introduced by Representative Steve Scalise in the House Committee on Energy and Finance on November 2,

[4] H.Rept. 112-422 is available at http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt422/pdf/CRPT-112hrpt422.pdf.

2011, and was approved by the Subcommittee on Communications on November 16, 2011. S. 1780 was introduced by Senator Dean Heller in the Senate Committee on Commerce, Science, and Transportation on November 2, 2011.
H.R. 3310 and S. 1780 Summary. This bill would amend the Communications Act of 1934 to consolidate the reporting obligations of the FCC to improve oversight and reduce reporting burdens.

Enhancing the Technical Expertise of the Commission

FCC Technical Expertise Capacity Heightening Act (S. 611) and FCC Commissioners' Technical Resource Enhancement Act (H.R. 2102)

- **S. 611 Status:** S. 611 was introduced by Senator Olympia Snowe in the Senate Committee on Commerce, Science, and Transportation on March 17, 2011.
  S. 611 Summary. This bill is substantially similar to its companion bill, H.R. 2102, but unlike that bill, S. 611 also includes a requirement that the FCC "enter into an arrangement with the National Academy of Sciences to complete a study of the technical policy decision making and the technical personnel at the Commission."
- **H.R. 2102 Status.** H.R. 2102, also called the "FCC TECH Act," was introduced by Representative Cliff Stearns in the House Committee on Energy and Commerce on June 2, 2011. The bill was referred to the Subcommittee on Communications and Technology on June 3, 2011.
  H.R. 2102 Summary. This bill would amend the Communications Act of 1934 to permit each commissioner of the FCC to appoint an electrical engineer or computer scientist to provide technical consultation and to interface with the Office of Engineering and Technology and other FCC bureaus and technical staff. It would require such engineer or scientist to hold an undergraduate or graduate degree in his or her field of expertise.

FCC-Related Government Accountability Office Studies

The Government Accountability Office (GAO) has conducted two studies since 2007 related to the operation of the FCC.

Enforcement Program Management (February 2008)[5]

According to the GAO analysis of FCC data, between 2003 and 2006, the number of complaints received by the FCC totaled about 454,000 and grew from almost 86,000 in 2003 to a high of about 132,000 in 2005. The largest number of complaints related to violations of the do-not-call

[5] GAO, Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, "FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations, and Additional Actions Are Needed," February 15, 2008, http://www.gao.gov/new.items/d08125.pdf.

list and telemarketing during prohibited hours. The FCC processed about 95% of the complaints it received. It also opened about 46,000 investigations and closed about 39,000; approximately 9% of these investigations were closed with an enforcement action and about 83% were closed with no enforcement action. The GAO was unable to determine why these investigations were closed with no enforcement action because the FCC does not systematically collect these data. The FCC told GAO that some investigations were closed with no enforcement action because no violation occurred or the data were insufficient.

The GAO noted that the FCC assesses the impact of its enforcement program by periodically reviewing certain program outputs, such as the amount of time it takes to close an investigation, but it lacks management tools to fully measure its outcomes. Specifically, FCC has not set measurable enforcement goals, developed a well-defined enforcement strategy, or established performance measures that are linked to the enforcement goals. The GAO stated in its report that without key management tools, FCC may have difficulty assuring Congress and other stakeholders that it is meeting its enforcement mission.

The GAO found that limitations in FCC's current approach for collecting and analyzing enforcement data constitute the principal challenge the agency faces in providing complete and accurate information on its enforcement program. These limitations, according to the GAO, make it difficult to analyze trends; determine program effectiveness; allocate Commission resources; or accurately track and monitor key aspects of all complaints received, investigations conducted, and enforcement actions taken.

Equal Access to Rulemaking Information (September 2007)[6]

In September 2007, GAO released a study, conducted in response to a congressional request, on the FCC's rulemaking process. Specifically, the GAO studied four rulemakings as case studies to determine the extent to which the FCC followed the steps for rulemakings required by law, including those related to public participation.[7]

The GAO found that while the FCC generally followed the rulemaking process in the four case studies and most ex parte filings complied with FCC rules, several stakeholders had access to nonpublic information. For example, in discussions with some stakeholders that regularly participate in FCC rulemakings, multiple stakeholders generally knew when the commission scheduled votes on proposed rules well before FCC notified the public, even though FCC rules prohibit disclosing this information outside of FCC. Other stakeholders said that they could not learn when rules were scheduled for a vote until FCC released the public meeting agenda, at which time FCC rules prohibit stakeholders from lobbying FCC. As a result, stakeholders with

[6] GAO, Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, "FCC Should Take Steps to Ensure Equal Access to Rulemaking Information," September 6, 2007, http://www.gao.gov/new.items/d071046.pdf.

[7] The FCC generally begins the rulemaking process by releasing a Notice of Proposed Rulemaking, or "NPRM," and establishing a docket to gather information submitted by the public or developed within the FCC to support the proposed rule. Outside parties are permitted to meet with FCC staff, but must file a disclosure in the docket, called an ex parte filing, that includes any new data or arguments presented at the meeting. Once the FCC staff has analyzed information in the docket and drafted a final rule, the commissioners vote on whether to adopt it. The FCC chairman decides which rules the commission will consider and whether to adopt them by vote at a public meeting or by circulating them to each commissioner for approval. Stakeholders unsatisfied with a rule may file a petition for reconsideration with the commission or petition for review in federal court.

advance information about which rules are scheduled for a vote would know when it would be most effective to lobby FCC, while stakeholders without this information would not.

The GAO recommended that, to ensure a fair and transparent rulemaking process, the chairman of the FCC take steps to ensure equal access to information, particularly in regard to the disclosure of information about proposed rules that are scheduled to be considered by the commission, by developing and maintaining (1) procedures to ensure that nonpublic information will not be disclosed and (2) a series of actions that will occur if the information is disclosed, such as referral to the Inspector General and providing the information to all stakeholders.

FCC Budget, Authorization, and Reporting to Congress

Since the 110th Congress, the FCC has been funded through the Financial Services (House) and Financial Services and General Government (Senate) appropriations process as a single line item. Previously, it was funded through what is now the Commerce, Justice, Science appropriations process, also as a single line item.

Most of the FCC's budget is derived from regulatory fees collected by the agency rather than through a direct appropriation.[8] The fees, often referred to as "Section (9) fees," are collected from license holders and certain other entities (e.g., cable television systems) and deposited into an FCC account. The law gives the FCC authority to review the regulatory fees and to adjust the fees to reflect changes in its appropriation from year to year. Most years, appropriations language prohibits the use by the Commission of any excess collections received in the current fiscal year or any prior years. These funds remain in the FCC account and are not made available to other agencies or agency programs nor redirected into the Treasury's general fund.

FCC FY2012 and FY2013 Budgets

For FY2013, the FCC has requested an increase of $7 million in its appropriated budget to $432 million, including $85 million from auction receipts and $347 million from regulatory fees.

The FY2012 budget is included in P.L. 112-74, the Consolidated Appropriations Act, 2012 (H.R. 2055), which was signed by President Obama on December 23, 2011. The budget provides $339,844,000 for agency salaries and expenses with no direct appropriation (all funding will be obtained through the collection of regulatory fees). This is a decrease of $16,790,000 from the FY2011 budget.

The FY2012 budget also included language added by Congress to (1) extend the suspension of the application of the Anti-Deficiency Act to the Universal Service Fund until the end of 2013 and (2) prohibit the FCC from using any appropriated funds to "modify, amend, or change its rules or regulations for universal service support payments to implement the February 27, 2004

[8] The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, 47 U.S.C. §159) requires that the FCC annually collect fees and retain them for FCC use to offset certain costs incurred by the Commission. The FCC implemented the regulatory fee collection program by rulemaking on July 18, 1994.

recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments."

FCC Authorization

The FCC was last formally authorized in the FCC Authorization Act of 1990 (P.L. 101-396). Since that time, five bills have been introduced that would have reauthorized the FCC, but none were signed into law.

- 108th Congress, S. 1264, FCC Reauthorization Act of 2003, Senator John McCain;[9]
- 104th Congress, H.R. 1869, Federal Communications Commission Authorization Act, Representative Jack Fields;
- 103rd Congress, H.R. 4522, Federal Communications Commission Authorization Act , Representative Edward Markey, and
  103rd Congress, S. 2336, Federal Communications Commission Authorization Act, Senator Daniel Inouye; and
- 102nd Congress, S. 1132, Federal Communications Commission Authorization Act, Senator Daniel Inouye.

FCC Reporting to Congress

The FCC publishes four reports for Congress.

- **Strategic Plan.** The Strategic Plan is the framework around which the FCC develops its yearly Performance Plan and Performance Budget. The FCC is to submit its next four-year Strategic Plan by February 2014, in accordance with the Government Performance and Results Modernization Act of 2010, P.L. 111-352.
- **Performance Budget.** The annual Performance Budget includes performance targets based on the FCC's strategic goals and objectives, and serves as the guide for implementing the Strategic Plan. The Performance Budget becomes part of the President's annual budget request.
- **Agency Financial Report.** The annual Agency Financial Report contains financial and other information, such as a financial discussion and analysis of the agency's status, financial statements, and audit reports.

[9] For more information, see S.Rept. 108-140, at http://www.gpo.gov/fdsys/pkg/CRPT-108srpt140/pdf/CRPT-108srpt140.pdf.

- **Annual Performance Report.** At the end of the fiscal year, the FCC publishes an Annual Performance Report that compares the agency's actual performance with its targets.[10]

All of these reports are available on the FCC website.[11]

Overview of the FCC

The Federal Communications Commission (FCC) is an independent federal agency with its five members appointed by the President, subject to confirmation by the Senate. It was established by the Communications Act of 1934 (1934 Act or "Communications Act")[12] and is charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.[13] The mission of the FCC is to ensure that the American people have available, "without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges."[14]

The 1934 Act is divided into titles and sections that describe various powers and concerns of the Commission.[15]

- Title I—FCC Administration and Powers. The 1934 Act originally called for a commission consisting of seven members, but that number was reduced to five in 1983. Commissioners are appointed by the President and approved by the Senate to serve five-year terms; the President designates one member to serve as chairman. No more than three commissioners may come from the political party of the President. Title I empowers the Commission to create divisions or bureaus responsible for specific work assigned and to structure itself as it chooses.

[10] OMB Circular A-136 allows agencies the option of producing (1) two separate reports, an Agency Financial Report and an Annual Performance Report, or (2) a consolidated Performance and Accountability Report. The same information is provided to Congress in either case. The FCC elected the first option for FY2011. Also, in addition to the reports it submits to Congress, the FCC publishes an annual Summary of Performance and Financial Information, which is a citizen-focused summary of the FCC's yearly activities.

[11] http://www.fcc.gov/encyclopedia/fcc-strategic-plan.

[12] The Communications Act of 1934, 47 U.S.C. §151 et seq., has been amended numerous times, most significantly in recent years by the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (1996). References in this report are to the 1934 Act, as amended, unless indicated. A compendium of communications-related laws is available from the House Committee on Energy and Commerce at http://energycommerce.house.gov/108/pubs/108-D.pdf. It includes selected Acts within the jurisdiction of the Committee, including the Communications Act of 1934, Telecommunications Act of 1996, Communications Satellite Act of 1962, National Telecommunications and Information Administration Organizations Act, Telephone Disclosure and Dispute Resolution Act, Communications Assistance for Law Enforcement Act, as well as additional communications statutes and selected provisions from the United States Code. The compendium was last amended on December 31, 2002.

[13] See "About the FCC," at http://www.fcc.gov/aboutus.html.

[14] 47 U.S.C. §151.

[15] When Congress established the FCC in 1934, it merged responsibilities previously assigned to the Federal Radio Commission, the Interstate Commerce Commission, and the Postmaster General into a single agency, divided into three bureaus, Broadcast, Telegraph, and Telephone. See Analysis of the Federal Communications Commission, Fritz Messere, at http://www.oswego.edu/~messere/FCC1.html and the Museum of Broadcast Communications Archive at http://www.museum.tv/archives/etv/F/htmlF/federalcommu/federalcommu.htm for additional information on the history of the FCC.

- Title II—Common carrier regulation, primarily telephone regulation, including circuit-switched telephone services offered by cable companies. Common carriers are communication companies that provide facilities for transmission but do not originate messages, such as telephone and microwave providers. The 1934 Act limits FCC regulation to interstate and international common carriers, although a joint federal-state board coordinates regulation between the FCC and state regulatory commissions.
- Title III—Broadcast station requirements. Much existing broadcast regulation was established prior to 1934 by the Federal Radio Commission and most provisions of the Radio Act of 1927 were subsumed into Title III of the 1934 Act. Sections 303-307 define many of the powers given to the FCC with respect to broadcasting; other sections define limitations placed upon it. For example, Section 326 of Title III prevents the FCC from exercising censorship over broadcast stations. Also, parts of the U.S. code are linked to the Communications Act. For example, 18 U.S.C. 464 makes obscene or indecent language over a broadcast station illegal.
- Title IV—Procedural and administrative provisions, such as hearings, joint boards, judicial review of the FCC's orders, petitions, and inquiries.
- Title V—Penal provisions and forfeitures, such as violations of rules and regulations.
- Title VI—Cable communications, such as the use of cable channels and cable ownership restrictions, franchising, and video programming services provided by telephone companies.
- Title VII—Miscellaneous provisions and powers, such as war powers of the President, closed captioning of public service announcements, and telecommunications development fund.

FCC Leadership

The FCC is directed by five commissioners appointed by the President and confirmed by the Senate for five-year terms (except when filling an unexpired term). The President designates one of the commissioners to serve as chairperson. Only three commissioners may be members of the same political party. None of them can have a financial interest in any Commission-related business. The commissioners are:

- Julius Genachowski (confirmed by the Senate on June 29, 2009)
- Robert McDowell (confirmed by the Senate on June 25, 2009)
- Mignon Clyburn (confirmed by the Senate on July 24, 2009)
- Vacant
- Vacant.

FCC Structure

The day-to-day functions of the FCC are carried out by 7 bureaus and 10 offices. The current basic structure of the FCC was established in 2002 as part of the agency's effort to better reflect

the industries it regulates. The seventh bureau, the Public Safety and Homeland Security Bureau, was established in 2006.

The bureaus process applications for licenses and other filings, analyze complaints, conduct investigations, develop and implement regulatory programs, and participate in hearings, among other things. The offices provide support services. Bureaus and offices often collaborate when addressing FCC issues.[16] The bureaus hold the following responsibilities:

- Consumer and Governmental Affairs Bureau—Addresses all types of consumer-related matters from answering questions and responding to consumer complaints to distributing consumer education materials.
- Enforcement Bureau—Enforces FCC rules, orders, and authorizations.
- International Bureau—Administers the FCC's international telecommunications policies and obligations.
- Media Bureau—Develops, recommends, and administers the policy and licensing programs relating to electronic media, including cable television, broadcast television, and radio in the United States and its territories.
- Public Safety and Homeland Security Bureau—Addresses issues such as public safety communications, alert and warning of U.S. citizens, continuity of government operations and continuity of operations planning, and disaster management coordination and outreach.
- Wireless Telecommunications Bureau—Handles all FCC domestic wireless telecommunications programs and policies.[17] Wireless communications services include cellular, paging, personal communications services, public safety, and other commercial and private radio services. This bureau also is responsible for implementing the competitive bidding authority for spectrum auctions.
- Wireline Competition Bureau—Administers the FCC's policies concerning common carriers—the companies that provide long distance and local service to consumers and businesses. These companies provide services such as voice, data, and other telecommunication transmission services.

FCC Strategic Plan

The current FCC Strategic Plan covers the five-year period FY2012–FY2016. The plan outlines eight goals:

- Connect America: Maximize Americans' access to—and the adoption of—affordable fixed and mobile broadband where they live, work, and travel.
- Maximize Benefits of Spectrum: Maximize the overall benefits of spectrum for the United States.

[16] FCC Fact Sheet, http://www.fcc.gov/cgb/consumerfacts/aboutfcc.html.

[17] Except those involving satellite communications broadcasting, including licensing, enforcement, and regulatory functions. These functions are handled by the International Bureau.

- Protect and Empower Consumers: Empower consumers by ensuring that they have the tools and information they need to make informed choices; protect consumers from harm in the communications market.
- Promote Innovation, Investment, and America's Global Competitiveness: Promote innovation in a manner that improves the nation's ability to compete in the global economy, creating a virtuous circle that results in more investment and in turn enables additional innovation.
- Promote Competition: Ensure a competitive market for communications and media services to foster innovation, investment, and job creation and to ensure consumers have meaningful choice in affordable services.
- Public Safety and Homeland Security: Promote the availability of reliable, interoperable, redundant, rapidly restorable critical communications infrastructures that are supportive of all required services.
- Advance Key National Purposes: Through international and national interagency efforts, advance the use of broadband for key national purposes.
- Operational Excellence: Make the FCC a model for excellence in government by effectively managing the Commission's human, information, and financial resources; by making decisions based on sound data and analyses; and by maintaining a commitment to transparent and responsive processes that encourage public involvement and best serve the public interest.

The FCC has identified performance objectives associated with each strategic goal. Commission management annually develops targets and measures related to each performance goal to provide direction toward accomplishing those goals. Targets and measures are published in the FCC's Performance Plan, submitted with the Commission's annual budget request to Congress. Results of the Commission's efforts to meet its goals, targets, and measures are found in the FCC's Annual Performance Report published each February. The FCC also issues a Summary of Performance and Financial Results every February, providing a concise, citizen-focused review of the agency's accomplishments.

Proposals for Change

Proposals for change at the FCC can be characterized as either "procedural" changes that focus on the manner in which the agency conducts its business or "substantial" changes that focus on the manner in which the FCC regulates the communications industry.

Potential Procedural Changes

Some of procedural changes under consideration would require new legislation (e.g., Sunshine rules), while others could be achieved through internal FCC action.

Adoption/Release of Orders

The FCC often adopts orders and issues press releases with a summary of the order weeks or even months prior to releasing the order itself. For example, the Triennial Review, which dealt with

controversial issues relating to competition in the local telecommunications market, and the 800 MHz order, which dealt with controversial and technically complicated issues related to interference to public safety communications, were released six months and one month, respectively, after they were officially adopted by the Commission. Some congressional policymakers have discussed instituting a "shot clock," which would require the FCC to issue the actual order within a set time frame after it adopts the order and issues a press release.

Sunshine Rules

Under current "sunshine laws,"[18] only two commissioners may meet outside the construct of an official "open meeting." While such a requirement, in theory, promotes open discussion of issues under consideration, in reality, most Commission business is conducted by circulating drafts of orders for comment. Further, the open meeting requirement may actually hinder discussion among the commissioners, especially in cases where the disagreement on the draft is significant. In such cases, it might be possible for further compromise if a third or fourth commissioner could be involved in the discussion. While the FCC cannot institute such changes without congressional amendment to current sunshine requirements, it could be useful to study how other agencies, which do not employ circulation as much as the FCC, work through contentious issues on their agendas. In the past, criticism has been aimed at the sunshine requirements because they could be seen as pushing too much power to the staff and not allowing more than two commissioners to be in the same room at one time.[19]

The Federal Communications Commission Collaboration Act (H.R. 1009) is intended to allow more leeway in the manner in which commissioners may meet. H.R. 1009 was introduced by Representative Anna on March 10, 2011, and referred to the Subcommittee on Communications and Technology on March 15, 2011. Details of this bill are outlined in a previous section of this report, "FCC-Related Congressional Action—112th Congress."

Timeliness

Some of the basic work of the FCC affects the everyday function of the telecommunication industry (e.g., license transfers for mergers and sales and license renewals). Some policymakers have expressed concern that these processes take too long to complete. Similar to views concerning more complicated regulatory actions such as rulemaking proceedings, these policymakers believe there should be a strict time limit on how long these actions may take to complete. Such time limits, they state, would provide further operational certainty within the industry.

[18] The Government in the Sunshine Act, P.L. 94-409, was passed in 1976. It requires that all federal agencies with units that work independently of each other hold their meetings in public session. The bill explicitly defined meetings as essentially any gathering. Many federal agencies, most notably the independent regulatory agencies, including the FCC, are headed by multiple commissioners. These agencies make most of their decisions through discussions and voting by the board or commission members. This law was created so that these meetings would be in the public domain for all to review. Additional information on this law is available at http://www.everything2.com/index.pl?node_id=1161139.

[19] "Stevens to Continue Listening Sessions, But Sees Telecommunications Bill by July," Daily Report for Executives, No. 51, March 17, 2005, Page A-1, at http://ippubs.bna.com/IP/BNA/der.nsf/SearchAllView/96C56942C092C93B85256FC70014F11F?Open&highlight=FCC,SUNSHINE.

Enforcement

Enforcement of agency rules is currently the responsibility of the FCC's Enforcement Bureau. Previously, enforcement responsibilities were held by a division within each bureau. For example, enforcement of "slamming"[20] was done by a division within what was then the Common Carrier Bureau (now called the Wireline Competition Bureau). Some policymakers have questioned whether the current "unified" structure is more effective than the previous "diversified" structure and have suggested studying the issue.

Potential Substantive Changes

While the changes discussed above could be made by the FCC absent congressional action, other, more significant changes would likely require the passage of legislation. In fact, the FCC has restructured over the past few years to better reflect the telecommunications industry, but it is still required to adhere to the statutory requirements of its governing legislation, the Communications Act of 1934. Title I of the 1934 Act gives the FCC the authority to structure itself in the manner it believes will allow it to best fulfill its responsibilities; however, from a practical standpoint, the FCC may not be able to restructure to the extent needed to implement significant changes unless changes are made to the 1934 Act itself.

Some policymakers have been critical of the FCC and the manner in which it regulates various sectors of the telecommunications industry—telephone, cable television, radio and television broadcasting, and some aspects of the Internet, including net neutrality. These policymakers, including some in Congress, and various interest group and think tank experts, have long called for varying degrees and types of reform to the FCC. Some have called for significantly downsizing the agency by eliminating its regulatory functions and transforming it into an enforcement agency.[21] Others have suggested abolishing the agency and parceling out its functions to other agencies.[22] Others still call for more regulation (e.g., indecency).

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[20] "Slamming" is the illegal practice of changing a consumer's telephone service, whether local, intralata service, or interlata service (including state to state, in state and international long distance), without permission. See http://www.fcc.gov/slamming/ for additional information.

[21] See, for example, "How to Reform the FCC," by Randolph J. May, June 21, 2004, http://news.com.com/How+to+reform+the+FCC/2010-1071_3-5236715.html.

[22] For example, under such a scenario, the FCC would no longer be responsible for reviewing and approving mergers between companies; instead, the Department of Justice would provide anti-trust review. See, e.g., "Why the FCC Should Die," by Declan McCullagh, June 7, 2004, at http://news.com.com/2010-1028-5226979.html; and "Law and Disorder in Cyberspace: Abolish the FCC and Let Common Law Rule the Telecosm," 1997, information available at http://www.phuber.com/huber/cl/cl.htm.