



FCC Regulations

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Background

The Federal Communications Commission (FCC) is a large, independent United States government agency. On June 19, 1934, Congress enacted legislation establishing the Federal Communications Commission (FCC). This important legislation made the administrative duties of regulating broadcasting and wired communications into a single agency. The FCC had three divisions: broadcast, telegraph, and telephone. Its prime directive was to create "a rapid, efficient, nationwide, and worldwide wire and radio communication service." The FCC's first seven commissioners and 233 employees soon began to consolidate the rules and procedures from three other agencies:

- Federal Radio Commission
- Interstate Commerce Commission
- Postmaster General into one agency

FCC has [JURISDICTION](#) in all 50 states, the District of Columbia, and U.S. possessions such as Puerto Rico, Guam, American Samoa, and the American Virgin Islands.

The FCC has grown a great deal over the years. Today it has nearly 2,000 employees and, in addition, to its original mandate, has added oversight responsibilities in new communications technologies such as satellite, microwave, and private radio communications. There are six major sections of the 1934 Act, called "titles." They are:

- Title I: This section describes the administration, formation, and powers of the FCC.
- Title II: This section is about common carrier regulation.
- Title III: This section concerns broadcast station requirements.
- Titles IV and V: These two sections deal with [JUDICIAL REVIEW](#) and enforcement of the Act.
- Title VI: This section describes various provisions of the Act including amendments to the Act and the emergency war powers of the president. It also extends FCC power to regulate cable television.

The 1934 Act restricts FCC regulatory authority to interstate and international common carriers. For purposes of the Act, telephone and microwave communications are deemed common carriers.

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Many of the prototypes for broadcasting regulations were created before the 1934 Act by the Federal Radio Commission. Sections 303-307 defines many of the FCC's powers related to broadcasting. Other sections either put limits on FCC's authority or some of the activities of broadcasters:

- The FCC may not censor broadcast stations.
- Individuals may not uttering obscene or indecent language over a broadcast station.
- The "Equal Time Rule" requires broadcasters to provide an equal opportunity to candidates seeking political office.
- Under the "Fairness Doctrine," broadcasters must allow for rebuttal of controversial viewpoints.

The 1934 Act has been amended many times. Communication technology has changed dramatically during the FCC's history. These changes include the introduction of the following:

- Television
- Satellite and microwave communications
- Cable television
- Cellular telephone
- PCS (personal communications) services

FCC responsibilities have increased to accommodate the regulatory issues presented by these new technologies. Consequently, it now shares regulatory power with other federal, executive, and judicial agencies.

The FCC oversees all broadcasting regulation. The FCC can license operators of telecommunication services and has recently used auctions as a means of determining who would be awarded licenses for personal communications services. The FCC enforces the requirements for wire and wireless communications through its rules and regulations. The FCC handles major issues at its monthly meetings; it deals with less important issues by circulating them among the commissioners for action. The language of the Act is flexible, sufficient to work as a framework for the FCC to promulgate new rules and regulations related to a huge variety of technologies and services.

Organization

The president appoints and the Senate confirms the FCC's five commissioners. They serve 5-year terms, unless appointed to fill an unexpired term. One of the five commissioners is designated by the president to serve as chairperson. The chairperson delegates management and administrative responsibility to the managing director of the FCC. To preserve a certain degree of political equilibrium, one political party may only have three commissioners at any one time. No commissioner may have a financial interest in any business related to the work of the commission. The five FCC commissioners supervise all of their organization's official activities and delegate agency responsibilities to staff units and bureaus.

Bureaus and Offices

The FCC contains four key branches and divisions:

1. Mass Media Bureau, which oversees licensing and regulation of broadcasting services
2. Common Carrier Bureau, which handles interstate communications service providers
3. Cable Bureau, which oversees rates and competition provisions of the cable act of 1992
4. Private Radio Bureau, which regulates microwave and land mobile services

And there are special offices within the FCC that help support the four bureaus:

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- The Field Operations Bureau, which provides enforcement, engineering and public outreach programs.
- The Office of Engineering and Technology, which provides engineering expertise and knowledge to the FCC and tests equipment for compliance with FCC standards.
- The Office of Plans and Policy, which functions as a sort of think tank for the FCC.

The FCC contains six Bureaus and ten Staff Offices, arranged by function. The sixteen bureaus and offices are:

1. Consumer & Governmental Affairs Bureau
2. Enforcement Bureau
3. International Bureau
4. Media Bureau
5. Office of Administrative Law Judges
6. Office of Communications Business Opportunities
7. Office of Engineering And Technology
8. Office of Inspector General
9. Office of Legislative Affairs
10. Office of Media Relations
11. Office of Plans And Policy
12. Office of The General Counsel
13. Office of The Managing Director
14. Office of Work Place Diversity
15. Wireless Telecommunications
16. Wireline Competition Bureau.

These bureaus' responsibilities include:

- Analyzing complaints and conducting investigations
- Developing and implementing regulatory programs
- Participating in hearings
- Processing applications for licenses and other filings

Although these various divisions within the FCC have individual functions, they frequently join to address issues that affect the entire FCC.

The Fairness Doctrine

First Amendment issues have been the most active areas of public controversy among broadcasters since the Communications Act of 1934. The FRC and then the FCC have maintained that "scarcity" requires a licensee to operate a broadcast station in the public trust; a station is not meant to be an exclusive means to promote its owners' views. This controversial doctrine formed the basis of many FCC rules up through the mid-1980s.

The **FAIRNESS DOCTRINE** withstood constitutional challenges. For example, in 1969 the Doctrine was held to be constitutional by the Supreme Court in *Red Lion Broadcasting v. FCC* (395 U.S. 367). Broadcasters had complained vociferously about the doctrine, complaining that it produces a chilling effect on free speech. Despite the potential for conflict, though, the FCC determined a station's fairness record on the overall programming record of the licensee. The U.S. Supreme Court also reaffirmed that as long as a licensee met its public [TRUSTEE](#) obligations, the licensee was not obligated to sell or give time to specific opposing groups

to meet Fairness Doctrine requirements. Eventually, the FCC commissioners pursued policies of deregulation and began looking for ways to eliminate the Fairness Doctrine.

In 1985, an FCC report concluded that scarcity was no longer a valid argument and the Fairness Doctrine unduly prevented broadcasters from airing more controversial material. Two subsequent federal court cases finally allowed the FCC to eliminate the Fairness Doctrine in 1987. The FCC revoked the Fairness Doctrine, with the exception of the personal attack and political editorializing rules that remain in effect.

The FCC and Broadcasting

Since the FCC's founding, the act of determining whether a licensee has fulfilled its responsibilities under the "public interest, convenience and necessity" standard of the Act has varied a great deal depending upon the composition of Commission and the various orders or requests from Congress. The FCC enjoys broad authority under section 303 to do the following:

- Approve equipment and set standards for levels of interference
- Assign frequencies and power
- Classify stations and prescribe services
- Issue cease and desist orders
- Levy fines and forfeitures
- Make regulations for stations with network affiliations
- Prescribe qualifications for station owners and operators

Perhaps the FCC's most important powers are those associated with licensing. These powers allow the FCC to license or short-license broadcast licenses. It can also withhold, fine, revoke or renew broadcast licenses and construction permits based on its own evaluation of whether the station has served in the [PUBLIC INTEREST](#). Even though the FCC can revoke a license, it has not used this authority much over its 60-year history.

Before the era of deregulation, the FCC had a set of complicated rules and regulations for broadcasters. At the same time, it also gave licensees a lot of scope to determine what constituted service in the public interest based on local needs; this was known as the "Ascertainment Policy." Once the FCC licensed a station, the station's operator had to monitor the technical, operational, and programming functions of the station. It also had to maintain files on all aspects of station operations for several years.

The requirements for filing for and renewing licenses for broadcasters are greatly reduced today. But when two or more applicants compete for the same license or when someone challenges a Petition to Deny, the FCC determines which of the rival applicants is the most qualified to own and operate the broadcasting facility. There are strict procedures for hearings that ensure that the applicants' rights are protected. Consequently, the FCC's adjudicative process can be expensive and time-consuming.

Broadcast Regulation and FCC Policy Decisions

Because the 1934 Act does not enumerate specific powers to regulate networks, the FCC has sought to regulate the relationship between affiliated stations and broadcast networks. Following the promulgation of the FCC's Chain Broadcasting Regulations, major radio and television networks challenged the Commission's authority to promulgate such rules. Their 1943 suit, *National Broadcasting Co., Inc. et al. v. United States* (319 U.S. 190) resulted in the Supreme Court upholding the constitutionality of the 1934 Act as well as the

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FCC's rules related to business alliances. In its opinion, the Court pointed out the broad and flexible powers granted to the FCC by Congress. The FCC has used the network case as a precedent to justify its broad discretionary powers in numerous subsequent rulings.

The FCC promulgated the seven-station rule, multiple-ownership and cross-ownership restrictions, and cable television-broadcast television cross-ownership rules to promote a diverse group of owners and opinions in various markets and geographical areas. But as the FCC licensed more radio and television stations, restrictions that limited ownership to a few stations made less sense to the FCC. Thus, recognizing greater market competition, the Commission relaxed ownership rules in 1985. Subsequently, the FCC eased restrictions on the following areas:

- Anti-Trafficking
- Ascertainment
- Duopoly and Syndication
- Financial Interest Rules
- Limits on Commercials
- Ownership

Regulating Broadcast Television and Radio

To broadcast radio or TV signals in the United States, an owner or operator must obtain a license from the FCC. The FCC licenses all transmitters whose signal can travel distances, although there are a few exceptions for very low power radio transmitters, such as those in CB radios and walkie-talkies.

The FCC licenses radio transmitters according to geography and certain other common ownership rules that are intended to help prevent radio stations from interfering with the signals of other stations. The spectrum of available radio and television frequencies is limited, so the FCC can issue only a limited number of licenses. Therefore, broadcast licenses are extremely valuable, particularly in large cities.

The FCC limits individuals or [CORPORATE](#) entities from acquiring more than a certain number of stations in order to promote diverse viewpoints over the airwaves. The Telecommunications Act of 1996 relaxed these limits, sparking a wave of recent broadcast mergers and acquisitions.

Wireless "Cellular" And "PCS" Communications

The FCC administers licensing for wireless communications. This industry is growing rapidly, evidenced by the many new products and services using wireless frequencies that are announced every week. Cellular creates a system of mobile communications through "cells," which are small, linked service areas that operate using analog technologies.

Personal communications services (PCS) are essentially mobile phones that operate with digital technologies. PCS units can provide a range of services and features such as paging, answering services, and text messaging. The newest PCS versions even permit users to send and receive text e-mail.

Communications law is a broad field covering many issues that arise from the transmission of information. But every communications law issue involves problems with either "content" or "distribution." Some of the most common problems associated with content include:

- Copyright
- Libel/Slander
- Patents
- Trademark

Getting Involved in FCC Rulemaking

When the FCC considers changes to its rules, it seeks comments from interested parties. These filings are known as "comments." The FCC then allows for a period—usually around 30 days- for interested individuals or groups to respond to the comments of others; these responses are known as "reply comments."

The FCC encourages comments from members of the public on its proceedings and proposed rulemakings. Comments are either formal or informal. Formal comments are those that have a specific deadline and require a certain number of copies—usually four. Additionally, the FCC places formal comments in the [DOCKET](#). Docket numbers are crucial to make sure that an individual's comments are considered, no matter how they are submitted. To locate a docket number, people can contact the Office of Public Affairs, Public Service Division, or the bureau or office responsible for the item.

All of the FCC's decision-makers read and consider formal comments. But informal comments are those that do not meet deadline or copy requirements. While they are placed in the docket, they will not be as widely distributed within the FCC for review. There is no guarantee that informal comments will be read. If individuals file formal comments, they must deliver an original plus four copies of their comments to the FCC's Office of the Secretary. If they want their formal comments to be sent to the commissioners themselves, they need to submit an original and nine copies.

Unfortunately, many people do not comment on issues of interest to them because they think that comments must be prepared and filed by an attorney. This is not true; individuals need not hire an attorney to prepare comments. There is no set format for comments, and anyone may prepare and file comments. People can prepare comments as they would a short statement or a brief letter. Of course, comments may also be detailed documents prepared by an outside law firm or other professional.

When preparing comments for the FCC, people should try to prepare sound arguments. Well-argued comments are the most helpful to the Commission when it is formulating new rules. In the end, new rules must stand the test of petitions of reconsideration by the parties involved, and sometimes they also face court challenges.

Making a Personal Presentation

Any communication directed to the merits or outcome of an FCC proceeding is considered an "ex parte" presentation. Citizens may appear in person before FCC officials to make an ex parte presentation. Ex parte presentations may also be made in writing. The FCC has specific disclosure requirements associated with different forms of ex parte presentations:

1. Oral ex parte presentations: If individuals want to make oral ex parte presentations and present data or arguments in that proceeding that are not already reflected in their written comments, they must provide an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) that summarizes the data and arguments they intend to present. Their memoranda must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates, the fact that an original and one copy have been submitted to the

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Secretary, and it must be labeled or captioned as an ex parte presentation. Individuals can file their memoranda on the date of their oral presentations.

2. Written ex parte presentations: Individuals must provide two copies of the written presentation to the Commission's Secretary to be included in the public record. This must occur on the same day the presentation is submitted. They need to be sure to include the docket number on the face of the presentation to which it relates, and that two copies of it have been submitted to the Secretary, and label it as an ex parte presentation.

It is a good idea to contact the FCC staff member associated with the proceeding before planning an ex parte presentation. Because some proceedings are restricted, staff can let people know if they can make a presentation and can explain the rules for doing so.

Electronic Filing

The FCC actively encourages participation in its rulemaking process. One way it does so is by urging the public to submit comments on proposed rules through electronic mail and fax. If individuals file comments via email and want it to be treated as "formal," they should also print out their comments and send the original plus four copies to the Secretary's office by the stated deadline. If they cannot make the deadline this way, or if they are faced with the prospect of commenting informally or not commenting at all, they should go ahead and submit their comments any way they can, then follow up with a phone call to ensure the FCC received them. If they merely file their comments via email or fax or in the form of a letter without the extra four copies, the FCC will consider them to be "informal" comments.

Other First Amendment Issues

The FCC has recently been confronted with several controversial issues concerning indecent or obscene broadcasts. And increasingly suggestive music lyrics prompted the FCC to take action against several licensees in 1987. In a formal Public Notice, the FCC restated a generic definition of indecency, which was subsequently upheld by the U.S. Court of Appeals. With encouragement by Congress, the FCC increased its efforts to limit the broadcast of indecent programming material. This action includes such instances as the graphic depiction of aborted fetuses in political advertising. Various FCC enforcement rules, including a 24-hour ban and a "safe harbor period" from midnight to 6 a.m., have been challenged in court.

Currently the FCC has come under criticism on several fronts. Its critics claim that the agency is unnecessary and the Communications Act of 1934 is outdated. Sweeping changes in communications technology are placing new burdens on the commission's resources. But it remains to be seen whether the FCC will be substantially changed in the future.

Additional Resources

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Organizations

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