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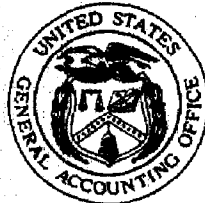
GAO

Report to the Chairman, Subcommittee  
on Communications and Finance,  
Committee on Energy and Commerce,  
House of Representatives

September 1994

# TELECOMMUNICATIONS

## FCC Procedures Delay Release of Decision Documents



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United States  
General Accounting Office  
Washington, D.C. 20548

Resources, Community, and  
Economic Development Division

B-257492

September 28, 1994

The Honorable Edward J. Markey  
Chairman, Subcommittee on  
Telecommunications and Finance  
Committee on Energy and Commerce  
House of Representatives

Dear Mr. Chairman:

Regulatory decisions made by the Federal Communications Commission (FCC)—on issues ranging from network and cable television programming to telephone services and rates—affect virtually every individual, influence business practices in multibillion-dollar industries, and frequently engender intense media attention and/or numerous legal challenges. FCC's decisions are reached by a majority vote of the five Commissioners on issues that may be discussed and voted on in open meetings (referred to hereinafter as meeting decisions) or circulated and voted on privately and individually (circulated decisions). Once a vote has been taken, a decision document—such as a rulemaking published in the Federal Register or a letter in response to a petition—is released to the public.

Concerned that FCC has been taking an excessively long time to release decision documents after the Commissioners have voted, you asked us to examine (1) the timeliness of public releases of FCC decisions, (2) whether FCC's procedures for releasing documents contribute to delays in these releases and how FCC's procedures compare to those of the Nuclear Regulatory Commission (NRC) and the Securities and Exchange Commission (SEC), and (3) FCC's controls to ensure that revisions are not made to decisions voted on by the Commissioners without their approval. Included in our response to these questions is information that you requested on FCC's circulation voting process. Also, in appendix I we have provided the information you requested on ex parte contacts.<sup>1</sup>

## Results in Brief

During calendar years 1990 through 1993, between 7 and 18 percent of all FCC decisions were released to the public more than 30 days after they were adopted by the Commissioners. After FCC set a 30-day release target for meeting decisions in 1991, only 4 percent (three decisions) in 1992 and 1993 exceeded 30 days to release. The 30-day target does not apply to

<sup>1</sup>Ex parte contacts are any contacts that outside parties have with the Commissioners and other FCC employees which, if written, are not served on the parties or, if oral, are made without an opportunity for all parties to attend.

circulated decisions, and during 1990 through 1993, the percentage of these decisions that were released after 30 days ranged from 8 to 17 percent.

According to FCC officials, some delay in releasing either meeting or circulated decisions to the public occurs as a result of administrative procedures that allow time for final editing. Because the FCC Commissioners vote on the substance of an issue before agreeing on the specific language in the decision, some redrafting may occur after they have voted. The decision document is not released to the public until this editing is completed. These procedures differ from those used at NRC, which releases meeting decisions on the day of the vote and circulated decisions within 10 days. SEC does not have written procedures for releasing decisions, but the SEC Secretary told us that with few exceptions, decisions are released within a couple of days of adoption.

FCC does not require retention of the documents needed to determine whether substantive revisions of the text of decisions occurred after the Commissioners had voted. As a result, insufficient records were available for us to evaluate possible changes in the decisions made during the period under review.

## Background

Drafts of pending FCC decisions are written by staff from one of FCC's offices or bureaus, such as the Office of Engineering Technology for technical matters or the Mass Media Bureau for television and radio issues. The decision draft sets forth the proposed action and explains the underlying rationale in detail. The Chairman decides whether the Commissioners will vote in public (a meeting decision) or in private (a circulated decision). The Chairman may call for a circulated vote when (1) no meeting is scheduled imminently, (2) an emergency situation exists, or (3) an item is considered to be routine and discussion by the Commissioners is not anticipated. Otherwise, the Chairman calls for a meeting vote. Any Commissioner may request a meeting vote for any item.

According to FCC's Associate and Assistant General Counsels, the Commissioners generally get a decision draft before a meeting and may have informal discussions on (between, at most, two Commissioners) and make editing changes to the draft before it is presented for vote. On a few occasions, the Commissioners have voted on a summary document, which establishes what is being discussed but is not a draft decision. FCC releases, on the day of each Commission meeting, a detailed summary of

each item on the Commission's agenda. After the Commissioners have voted, the draft decision is reviewed and revised, if necessary, by the Commissioners, their staffs, and the responsible FCC office or bureau. Once revisions are completed and the document has been reviewed by the Office of General Counsel, the decision is released to the public.

For several years, congressional overseers considered the length of time between the Commission's adoption of a decision at a public meeting and its subsequent release to be inordinately and unacceptably long and to be a burden on the parties to the proceedings and the public, who had to wait to determine the full ramifications of the Commission's action. In May 1991, congressional concerns focused on indefinite delays caused by extensive modifications to drafts of decisions already voted on and on the possible impairment of the FCC's decision-making process when the Commissioners do not vote on an actual decision draft. As a result, the Chairman of the House Energy and Commerce Committee instructed FCC to address the Congress' concerns about meeting decisions that were released more than 30 days after the Commissioners had voted. In response, FCC immediately established administrative procedures to release items adopted during open meetings within 30 calendar days of adoption.

## Some FCC Decisions Released More Than 30 Days After Vote

During the past 4 calendar years—1990 through 1993—FCC released 1,988 decisions, including 315 decisions on issues voted on in open meetings and 1,673 decisions voted on by circulation. As table 1 shows, between 7 and 18 percent of all decisions were released more than 30 days after the Commissioners had voted.

**Table 1: Number and Percentage of FCC Decisions That Were Released More Than 30 Days After Vote, Calendar Years 1990 Through 1993**

Year	Meeting decisions		Circulated decisions		Total	
	Number	Percent	Number	Percent	Number	Percent
1990	28	33	50	15	78	18
1991	11	15	29	8	40	9
1992	1	1	82	17	83	14
1993	2	3	38	8	40	7

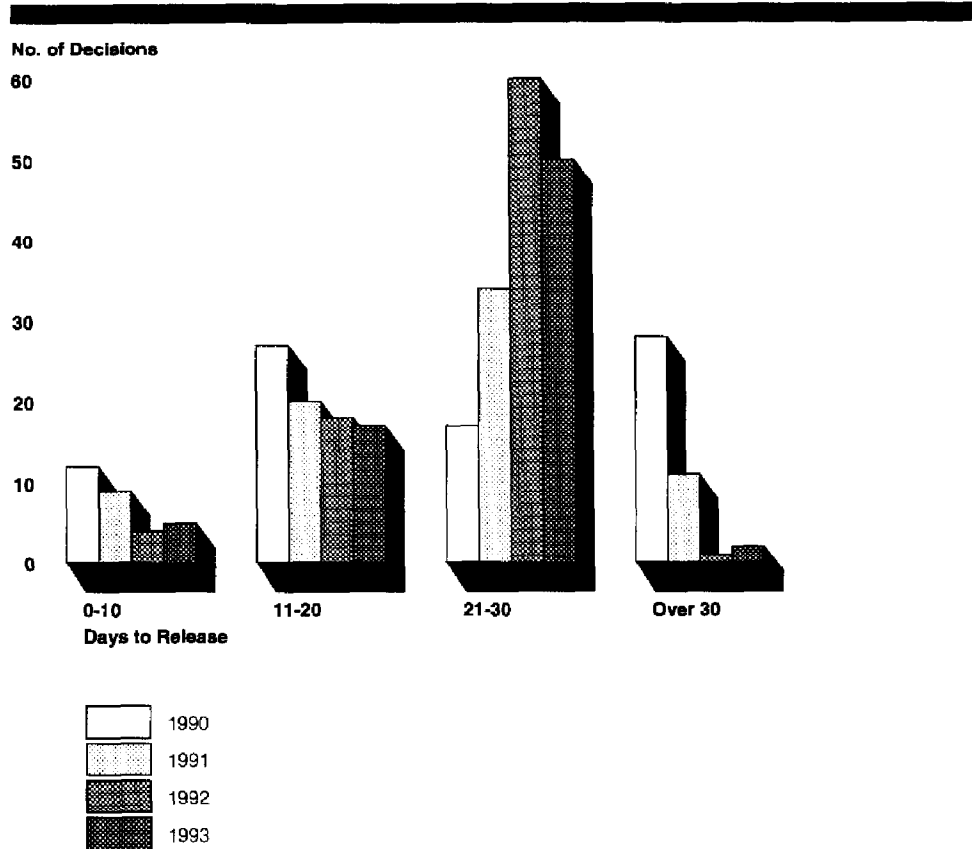
### Procedural Changes Significantly Reduced Number of Meeting Decisions Released After 30 Days

The number of meeting decisions that took longer than 30 days for public release dropped dramatically in calendar years 1992 and 1993 to a total of only 3, compared with 28 and 11 in calendar years 1990 and 1991, respectively (see table 1). A similar substantial decline occurred in the longest time it took to release meeting decisions: 97 days in 1990 compared with 36 days in 1993. (See app. II for meeting decisions that took the longest.) A former Secretary of FCC, who served as the official custodian for the Commission's documents within the Office of the Managing Director, attributed the improvement in releasing meeting decisions to administrative procedures that FCC implemented in May 1991. These procedures established a target of 30 calendar days for releasing all decisions voted on in open meetings.<sup>2</sup> In order to meet the 30-day target, FCC began formally establishing and tracking the due dates of edits by the Commissioners and others, reviews by the Office of General Counsel, and printing.

Although during 1990 through 1993 a sharp decline occurred in meeting decisions that were released more than 30 days after being voted on, the number of decisions that were released to the public in 21 to 30 days increased substantially (see fig. 1).

<sup>2</sup>The Office of the Managing Director oversees the agenda process, makes arrangements for the meetings of the Commission, documents the results of each meeting, and monitors compliance with the procedures for the agenda. Within that Office, the Secretary serves as the official custodian of the Commission's documents and is responsible for, among other things, scheduling the meetings of the Commission and ensuring that appropriate staff are available for presentations to the Commission.

**Figure 1: Timeliness of Release for Meeting Decisions**



FCC Associate and Assistant General Counsels suggested that the new procedures may actually increase the length of time for release of some decisions because FCC puts all meeting decisions on a 30-day release track—including decisions that might otherwise have been released more quickly, as well as more slowly.

**Some Circulated Decisions Continue to Be Released After 30 Days**

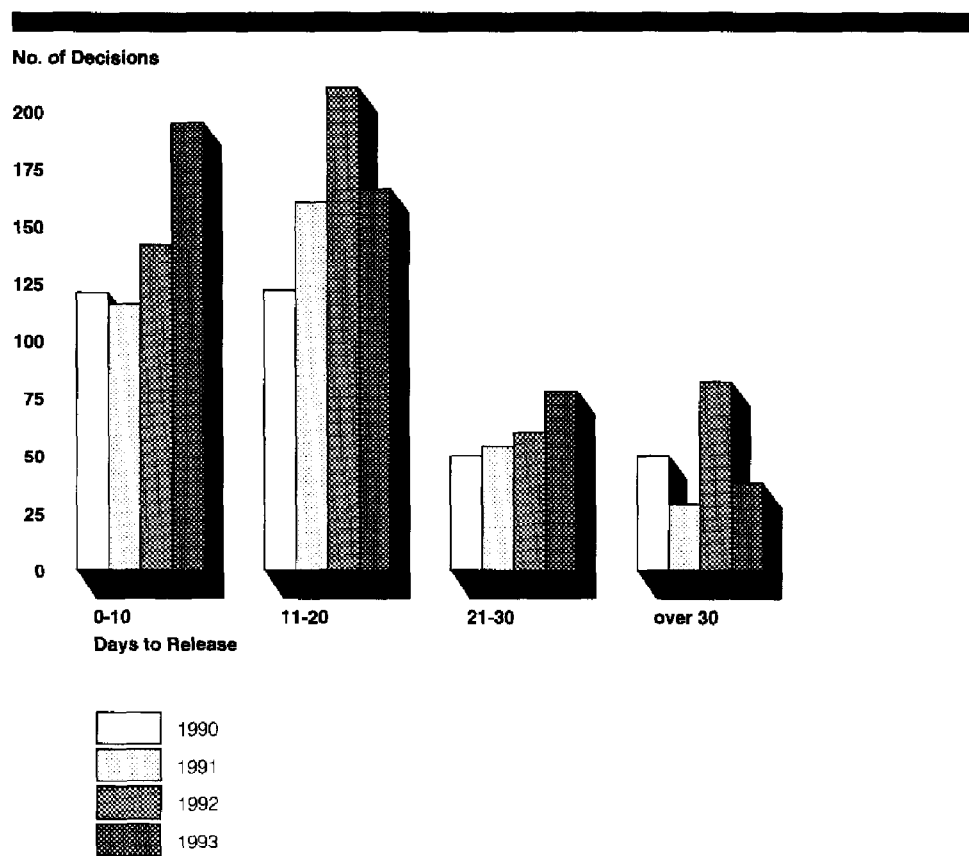
The 30-day target for release does not apply to circulated decisions, and compared with meeting decisions, a larger number of circulated decisions have taken more than 30 days to be released to the public. As shown in table 1, in calendar years 1992 and 1993,<sup>3</sup> 82 and 38 circulated decisions (17 and 8 percent), respectively, exceeded 30 days to public release. The percentage of circulated decisions that took longer than 30 days

<sup>3</sup>The period of time since FCC established its 30-day release target for meeting decisions.

substantially exceeded the 1 to 3 percent of meeting decisions that exceeded 30 days. The release times for circulated decisions showed an improvement between 1990 and 1993: A decrease occurred in the length of time to public release for the decision which took the longest—a drop from 160 days to 116 days. (See app. III for circulated decisions that took the longest.)

In contrast to meeting decisions, a greater proportion of circulated decisions were released in two time ranges: 0 to 10 days and 11 to 20 days (see fig. 2). Considering that FCC's criteria for circulating decisions include both emergency issues that require immediate attention and routine items, it is expected that a larger portion of circulated decisions would be released in the shorter time ranges.

**Figure 2: Timeliness of Release for Circulated Decisions**





In the 2 calendar years following FCC's adoption of its 30-day target for releasing meeting decisions, a larger number of decisions were made by circulation. In 1993, about 87 percent of FCC's decisions fell into this category, compared with 80 percent in 1990. (See table 2.) An FCC official observed that the number of decisions that the Commissioners could consider and make at meetings had remained fairly constant, but the number of issues they needed to decide increased; as a result, more of FCC's decisions tended to be made by circulation.

**Table 2: Number and Percentage of Meeting and Circulation Decisions, Calendar Years 1990 Through 1993**

Year	Decisions adopted				
	In meetings		By circulation		Total
	Number	Percent	Number	Percent	Number
1990	84	20	343	80	427
1991	74	17	359	83	433
1992	83	14	494	86	577
1993	74	13	477	87	551
<b>Total</b>	<b>315</b>	<b>16</b>	<b>1,673</b>	<b>84</b>	<b>1,988</b>

## FCC Officials Cite Administrative Procedures Related to Editing as Delaying Release of Decisions

The FCC Commissioners' practice is to vote on a draft decision document that sets forth the proposed action in detail and explains the rationale underlying the action. However, in a few instances the Commissioners vote without a draft decision, although they would have a summary document that establishes what is being discussed. In either case, post-vote revisions to the document may be necessary to incorporate final edits. FCC officials characterize all post-vote changes as "editorial revisions."

Although the term "editorial revision" suggests nonsubstantive changes, FCC places no restrictions on the extent or nature of changes that can be made to the text of an FCC decision between the time the Commissioners vote on it and the time the decision is released to the public, other than that no change can be made to the "bottom line" of any publicly announced decision without another vote. According to FCC's Associate and Assistant General Counsels, all substantive changes must be approved by the Commissioners before a decision is released. Following FCC's procedures, the FCC office or bureau that prepared the decision is responsible for making all editorial changes, which must be approved by the Chairman and the Commissioners. The Office of General Counsel reviews all final documents before they are released only for the purpose of ensuring that the document is legally correct.

In a May 1991 letter to the Chairman, House Energy and Commerce Committee, the FCC Commissioners noted that although FCC releases a detailed summary of the items on its agenda on the day that the Commission meets, the delays in releasing final written documents were the result of

“... the administrative process of incorporating the final edits of all those involved in the decision-making and drafting process. This has often taken more time than is desirable. While the reasons for delay in the release of specific items may vary, the delay generally reflects this fact. The delay does not reflect any significant substantive changes, after the Commission's vote, in the specific action taken by the Commissioners.”

FCC officials acknowledged that several items that were released late were highly complex technically and/or the subject of particularly intense media attention or numerous legal challenges. They noted that the Commissioners and their staffs may review several iterations of these kinds of decision documents before they are released.

Delays also have occurred in releasing decisions to the public after the Commissioners have voted, in a few instances, on summary documents. The delays occur because the summaries are much less detailed than the decisions that FCC releases to the public and therefore require a considerable amount of time to prepare in the proper format for a released decision. However, according to FCC's General Counsel, in rare instances in the past, summaries have been useful to enable the Commissioners to focus on particularly sensitive, complex, or controversial matters when faced with a statutory, court-imposed, or other deadline. In April 1991, the Commissioners voted to adopt a new syndication and financial interest rule for television networks on the basis of a summary document. The 22-page summary resulted in a 73-page report and order, which was written by FCC staff, including staff from each of the five Commissioners' offices, and released 50 days later.

### **NRC's Procedures Result in Faster Releases; SEC Has No Written Procedures on the Timing of Releases**

NRC and SEC officials told us that their Commissioners routinely complete the review and revision process before voting on a decision; as a result, the decisions are ready for release within a few days after voting. According to NRC's procedures, meeting decisions are to be released on the day of the vote, and the NRC Secretary told us that these decisions were immediately released. NRC's procedures allow up to 10 days for the release of decisions that are equivalent to FCC's circulated decisions, and the Secretary told us that these decisions were released within the required

time. SEC does not have written procedures on when decisions are to be released, but the SEC Secretary told us that the majority of SEC's decisions were released within 1 or 2 days.

## FCC's Procedures Are Inadequate to Track Decisions From Commissioners' Vote to Public Release

FCC lacks procedures that require the documentation of the decisions that the FCC Commissioners adopt and of subsequent changes made to these decisions until they are publicly released. Good internal controls require that an agency's actions and significant events be clearly documented and that the documentation be readily available for examination.<sup>4</sup>

FCC's files on decisions do not contain the information needed to review post-vote changes and verify that all significant changes were approved. The agency has no written procedures for what documents need to be kept, but the principal documents in FCC's Office of the Secretary files include the version of the draft decision document that was officially provided to the Commissioners (for example, before a meeting), the released decision, and a Bureau Agenda Release Form, which the bureau chief responsible for the draft signs to indicate that all edits requested by the Commission have been approved by the relevant Commissioners. No document shows the Commissioners' actual approval. FCC does not routinely maintain copies of intermediate drafts between the officially distributed draft and the released decision. The draft on which the Commissioners vote may differ from the draft officially distributed because the initial draft may have been edited between the time it was distributed and the time it was voted on. Thus, FCC has no record of the specific document on which the Commissioners voted, revisions to that draft, or the Commissioners' approvals, if needed.

FCC's public records—referred to as dockets in the case of hearings and rulemaking proceedings—include the released document, which according to FCC is the only official version of the item.<sup>5</sup> However, FCC's public files do not contain draft documents and specifically do not contain the draft of the document before the Commissioners at the time of adoption. Thus, FCC's public files are not designed to provide any documentation of whether substantive changes may have been made after the Commissioners had voted.

<sup>4</sup>Standards for Internal Controls in the Federal Government (U.S. General Accounting Office, 1983).

<sup>5</sup>FCC maintains a public record (docket) on rulemakings and other significant regulatory actions. Dockets are maintained on nearly all meeting decisions and some circulated decisions.

Although FCC's files contain the officially circulated document and the released document, because the draft decision document voted on and all subsequent revisions are not kept, including the Commissioners' approvals of all significant revisions, FCC is unable to verify whether or not substantive changes to the text of a decision occurred after a vote and were properly approved.

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## Conclusions

FCC has been responsive to congressional concerns about the length of time required to release meeting decisions publicly, and all but three meeting decisions in 1992 and 1993 were released within 30 days. However, FCC does not apply its 30-day target to circulated decisions, and during 1990 through 1993, between 8 and 17 percent of circulated decisions were not released within 30 days. FCC officials say that the delay in the public release of decision documents is primarily the result of FCC's procedures whereby the Commissioners typically vote on a draft that may require editorial revisions before it is released. FCC does not maintain adequate written records of the documents that the Commissioners vote on or revisions to these documents to ascertain whether substantive changes have occurred and been agreed to by the Commissioners. This lack of documentation may leave the Commission vulnerable to criticism that the documents publicly released may not be an accurate reflection of what the Commissioners decided. That perception may be especially important when decisions involve sensitive or controversial issues.

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## Recommendation

To ensure that FCC maintains adequate records and to allay potential criticism that released documents may not accurately reflect what the Commissioners decided, we recommend that the Chairman, FCC, direct the Managing Director to establish written procedures to maintain a record of the document on which Commissioners vote, along with the decision publicly released.

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## Agency Comments and Our Evaluation

In July 1994, we discussed the information contained in this report with the following FCC officials: the Managing Director and his staff, officials in the Office of General Counsel, and the Senior Legal Advisor to the Chairman. They agreed with the factual information in the report. We have incorporated their comments where appropriate. As requested, we did not obtain written agency comments on a draft of this report.

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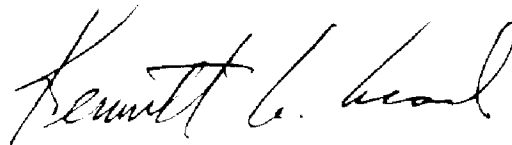
The FCC officials said that they do not believe that additional documentation of the Commissioners' decisions is necessary. They stated that the released document is the official decision document, and they stand by the integrity of FCC's process whereby the responsible bureau chief signs that all Commissioners have approved edits when necessary. We continue to believe that it is important for FCC to maintain a record of the document on which the Commissioners voted in order to meet good internal control standards, which require agencies' transactions to be clearly documented.

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This report is based on information obtained from officials of FCC, NRC, and SEC. Appendix IV details our objectives, scope, and methodology. We conducted our work from January 1993 to July 1994, in accordance with generally accepted government auditing standards.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of the report to interested congressional committees and the Chairman, FCC. We will also make copies available upon request. Please contact me on (202) 512-2834 if you or your staff have any questions. Major contributors to this report are listed in appendix V.

Sincerely yours,



Kenneth M. Mead  
Director, Transportation and  
Telecommunications Issues

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# Contents

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Letter	1
Appendix I FCC'S Ex Parte Procedures	14
Appendix II Meeting Decisions That Took the Longest Time to Release After the FCC Commissioners' Approval	18
Appendix III Circulated Decisions That Took the Longest Time to Release After the FCC Commissioners' Approval	20
Appendix IV Objectives, Scope, and Methodology	22
Appendix V Major Contributors to This Report	24
Tables	

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Contents

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Table 1: Number and Percentage of FCC Decisions That Were Released More Than 30 Days After Vote, Calendar Years 1990 Through 1993	3
Table 2: Number and Percentage of Meeting and Circulation Decisions, Calendar Years 1990 Through 1993	7
Table II.1: Meeting Decisions in 1990 That Were Delayed the Longest Time Before Release	18
Table II.2: Meeting Decisions in 1991 That Were Delayed the Longest Time Before Release	18
Table II.3: Meeting Decisions in 1992 That Exceeded 30 Days to Release	18
Table II.4: Meeting Decisions in 1993 That Exceeded 30 Days to Release	19
Table III.1: Circulated Decisions in 1990 That Were Delayed the Longest Time Before Release	20
Table III.2: Circulated Decisions in 1991 That Were Delayed the Longest Time Before Release	20
Table III.3: Circulated Decisions in 1992 That Were Delayed the Longest Time Before Release	21
Table III.4: Circulated Decisions in 1993 That Were Delayed the Longest Time Before Release	21

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<b>Figures</b>	Figure 1: Timeliness of Release for Meeting Decisions	5
	Figure 2: Timeliness of Release for Circulated Decisions	6

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**Abbreviations**

FCC	Federal Communications Commission
GAO	General Accounting Office
NRC	Nuclear Regulatory Commission
SEC	Securities and Exchange Commission

# FCC'S Ex Parte Procedures

After a vote is taken on a matter before the Federal Communications Commission (FCC), the written decision undergoes an edit process by the FCC staff. Some have expressed concern that this process may allow post-vote lobbying by outside parties before the decision is released to the public. FCC officials we spoke with contend that their edit process is safeguarded from such efforts by their ex parte rules.

Ex parte means “on behalf of” or “from one side.” Generally, according to FCC officials, whenever an outside person expresses views to the Commission on the merits of a pending proceeding without all parties having an opportunity to be present, or a party writes to the Commission or another party in the proceeding without sending copies to all parties, an ex parte presentation has been made.<sup>1</sup> The purposes of the Commission’s ex parte rules are (1) to ensure that an agency’s proceedings are decided on the merits of a public record developed in the proceeding rather than communications (presentations) shrouded in secrecy and (2) to ensure the adequacy and completeness of a record to enable effective judicial review of the agency’s action. Ex parte presentations are generally prohibited in adjudications that involve more than one formal party. Ex parte presentations are generally permitted in policy and rulemaking proceedings, provided that they are disclosed (see discussion below). Additionally, the Commission states that an important objective of its procedures is to allow it sufficient flexibility to obtain necessary information and evidence for reasoned decision-making.

According to an FCC official, most proceedings that go before the Commissioners in a meeting are policy and rulemaking proceedings in which ex parte presentations are permissible. However, as part of its ex parte rules, the Commission has adopted a “Sunshine Period prohibition” on presentations on the merits of any matter that is the subject of a Commissioners’ meeting. This prohibition runs from the issuance of a public notice (usually 7 days before the meeting) announcing that an item will be on an FCC meeting agenda, until the decision is released. Similar restrictions do not apply to matters that are voted on through the circulation process. However, the Commission’s general ex parte rules would apply.

<sup>1</sup>The Administrative Procedure Act defines an ex parte communication as an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given. 5 U.S.C. § 551(14). It does not include requests for status reports on any matter or proceedings. Id. The Administrative Procedure Act imposes restrictions on ex parte communications concerning only formal, on-the-record hearing proceedings. 5 U.S.C. § 557(d)(1). According to FCC officials, virtually no FCC meeting decisions fall within this category.



The ex parte rules (including the Sunshine Period prohibition) apply to decision-making personnel. FCC's definition of "decision-making personnel" is very broad and includes any member, officer, or employee of the Commission who is or may reasonably be expected to be involved in the decisional process in the proceeding. According to one FCC official, all personnel involved in the edit process would be subject to the ex parte rules. A brief description of FCC's ex parte rules follows.

## Ex Parte Rules for Meeting Items

Unless otherwise exempt, the Government in the Sunshine Act (Sunshine Act), 5 U.S.C. § 552b, requires agencies headed by a collegial body to hold open meetings.<sup>2</sup> Agencies generally are to provide notice of such meetings at least 1 week before the meeting, specifying the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated by the agency to respond to requests for information about the meeting.

As noted above, generally the Sunshine Period prohibition in FCC's ex parte rules prohibits the making of any presentation (whether ex parte or not) to decision-making personnel once the Sunshine notice has been issued. There are some exceptions. For example, the Congress is generally permitted to make presentations during this period if such presentations are otherwise permissible under the ex parte rules.<sup>3</sup> These restrictions apply during the Sunshine agenda period, which begins with the release of the Sunshine notice and terminates when the Commission either releases the text of a decision or order relating to the matter, or issues a public notice stating that the matter has been deleted from the agenda or returned to the staff for further consideration.

According to an FCC official, the ex parte Sunshine restrictions are followed in order to give the Commissioners and their staffs a "period of repose" in which to review and analyze the proposed items. The Commission does not want to be bombarded with presentations once the notice has been formally released.

If an oral or written presentation (not otherwise exempted) is received during the Sunshine period, a public notice is required to be issued

<sup>2</sup>The Sunshine Act does not require agencies to hold meetings nor does it prevent agency members from considering individually business that is circulated to them sequentially in writing. See, e.g., Railroad Com'n of Texas v. United States, 765 F.2d 221, 230 (D.C. Cir. 1985) and Communication Systems Inc. v. FCC, 595 F.2d 797, 800-801 (D.C. Cir. 1978).

<sup>3</sup>See P.L. No. 100-594, § 7, 102 Stat. 3022. See also, 47 C.F.R. § 1.1203.

describing the prohibited communication. All prohibited documents received during the Sunshine period are to be placed in a separate Sunshine-period folder. These folders are to be available to the public but are kept separate from the docket file.

### Ex Parte Rules for Circulated Items

The Commission has never officially applied the Sunshine prohibitions to matters that are acted upon by the Commission through the circulation process. However, FCC's ex parte rules for restricted and nonrestricted matters—described below—would apply. According to the Commission, once an item being circulated reaches a Commissioner's office, he or she is free to determine whether to permit presentations during this period (i.e., from the time the matter reaches the Commissioner's office until the decision on the matter is released) that would otherwise be permissible under the Commissioners' rules. As one official noted, there is no need for a "period of repose" since no formal public announcement has been made that a matter is being circulated to the Commissioners for their individual votes.

### Presentations Prohibited in Restricted Proceedings

Except for certain exemptions, ex parte presentations by outside persons (or Commission decision makers) are prohibited in restricted proceedings. Restricted proceedings include contested adjudicative proceedings as well as informal rulemaking proceedings on the allotment of a channel in radio or television broadcast services. The prohibition continues in effect until the proceeding has been decided or a settlement or agreement by the parties has been approved by the Commission and such decision or approval is no longer subject to reconsideration by the Commission or to review by any court.

If a prohibited oral ex parte presentation is made, the person to whom it is addressed must advise the person making the presentation that it is prohibited and terminate the discussion. Additionally, the Commission personnel to whom the presentation was made must forward to the Managing Director a statement that outlines the prohibited communications. Prohibited written ex parte presentations must be immediately forwarded to the Managing Director with a statement, if necessary, describing the circumstances of the presentation.

The documentation of the ex parte presentations must be placed in a public file, which must be associated with, but not made a part of, the file or record of the proceeding to which the presentation pertains. If a proceeding has been designated for a hearing, such materials may be

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considered in determining the merits, but only if they are made a part of the record of the proceedings.

**Presentations Allowed in  
Nonrestricted Presentations  
but Must Be Publicly Disclosed**

Except as provided under the Sunshine agenda, in nonrestricted proceedings, outside persons are permitted to engage in ex parte presentations to decision makers, but certain disclosure requirements must be met. Nonrestricted proceedings include most informal rulemaking procedures (but not the allotment of a specific channel in radio or television broadcast services). As in restricted proceedings, the requirements for nonrestricted proceedings generally continue in effect until the proceeding has been decided by the Commission and is no longer subject to reconsideration by the Commission or review by any court.

Any person outside the Commission who makes a written or oral presentation to decision-making personnel in a nonrestricted proceeding that is directed to the merits or outcome of a proceeding must provide on the same day two copies of the communication (or an original and one copy of a written summary of the meeting) to the Commission's Secretary for inclusion into the public record. The Commission's Secretary generally must include such documentation in a public notice listing any written or oral ex parte presentations received by his/her office during the preceding week related to any nonrestricted proceeding. Special, more lenient disclosure requirements exist for the Congress and federal agencies.

According to FCC officials, there are no ex parte restrictions on Commissioners or other decision-making employees of the Commission who talk to outside persons about nonrestricted proceedings. Thus, for example, the Commissioners may express their views about such proceedings in speeches or in discussions with Members of Congress.

# Meeting Decisions That Took the Longest Time to Release After the FCC Commissioners' Approval

We arbitrarily selected six as the cut off for the longest decisions listed over 30 days. In 1992 and 1993, fewer than six decisions took longer than 30 days to release.

**Table II.1: Meeting Decisions in 1990 That Were Delayed the Longest Time Before Release**

Decision	Days to release
Review of the technical assignment criteria for the use of AM broadcast service (FCC No. 90-135)	97
Report and order amending sections 73.1750, 73.3517, and 73.3571 of the rules and revising policies with respect to reduction in AM interference (FCC No. 90-137)	97
Improved methods for calculating skywave field strength in the broadcast band (FCC No. 90-138)	97
Report and order adopting new AM groundwave propagation curves (FCC No. 90-139)	97
Order on represcribing the authorized rate of return for interstate services of local exchange carriers (FCC No. 90-315)	79
Report and order on the definition of a cable television system (FCC No. 90-340)	71

**Table II.2: Meeting Decisions in 1991 That Were Delayed the Longest Time Before Release**

Decision	Days to release
Notice of proposed rulemaking on the amendment of parts 0, 1, 2, and 95 of the Commission's rules to provide for interactive video data services (FCC No. 91-16)	53
Report and order on the evaluation of the syndication and financial interest rules (FCC No. 91-114)	50
Report and order on competition in the interstate interexchange marketplace (FCC No. 91-251)	46
Memorandum opinion and order on AT&T communications, tariff FCC No. 15, and competitive pricing plan No. 2 (FCC No. 91-252)	46
Memorandum opinion and order on Cincinnati Bell Telephone Co. Tariff (FCC No. 91-117)	45
Notice of proposed rulemaking on the policies and rules concerning local exchange carrier validation and billing information for joint-use calling cards (FCC No. 91-118)	45

**Table II.3: Meeting Decisions in 1992 That Exceeded 30 Days to Release**

Decision	Days to release
Report and order and notice of proposed rulemaking on the expanded interconnection with local telephone company facilities and amendment of the part 69 allocation of general support facility costs (FCC No. 92-440)	32

**Appendix II  
Meeting Decisions That Took the Longest  
Time to Release After the FCC  
Commissioners' Approval**

**Table II.4: Meeting Decisions in 1993  
That Exceeded 30 Days to Release**

<b>Decision</b>	<b>Days to release</b>
Second report and order on the evaluation of the syndication and financial interest rules (FCC No. 93-179)	36
Report and order and further notice of proposed rulemaking on the implementation of sections of the Cable Television Consumer Protection and Competition Act of 1992 (FCC No. 93-177)	32

# Circulated Decisions That Took the Longest Time to Release After the FCC Commissioners' Approval

We arbitrarily selected six as the cut off for the longest decisions listed. In 1991, there were two decisions tied for sixth place so we included both decisions.

**Table III.1: Circulated Decisions in 1990 That Were Delayed the Longest Time Before Release**

Decision	Days to release
Applications of the Helen Broadcasting Co., for consent to assign the license of station WEEI-AM, Boston, Massachusetts, to Boston Celtics (FCC No. 90-168)	160
Amendment of section 73.202(b) and table of allotments, FM broadcast stations in Chester and Wedgefield, South Carolina (FCC No. 90-184)	140
Applications for renewal of license of certain broadcast stations serving Melbourne, Florida, and other communities in Florida (FCC No. 90-242)	137
Order on the amendment of part 87 of the Aviation Services Rules to make an additional frequency available to aeronautical utility mobile stations at airports with a control tower (FCC No. 90-173)	89
Memorandum opinion and order on Dorothy J. Owens, debtor-in-possession (assignor), and Buck Owens, debtor-in-possession (assignee), for assignment of license of station KDOB-TV, Bakersfield, California (FCC No. 90-298)	73
License renewal applications of certain commercial television stations serving Philadelphia, Pennsylvania. A joint petition was filed by the United Church of Christ (FCC No. 90-158).	72

**Table III.2: Circulated Decisions in 1991 That Were Delayed the Longest Time Before Release**

Decision	Days to release
Third report and order on detariffing the installation and maintenance of inside wiring (FCC No. 91-386)	85
Memorandum opinion and order on reconsideration of the classification of inside wiring services for accounting purposes (FCC No. 91-387)	85
Order on liability of Discount, Discs, Shalimar, Florida, for a forfeiture (FCC No. 91-261)	60
Memorandum opinion and order on the re-applications for renewal of certain broadcast stations serving communities in the states of Alabama and Georgia (FCC No. 91-268)	60
Memorandum opinion and order on the annual 1988 access tariff filing and GTE Operating Companies' petition for further reconsideration (FCC No. 91-152)	54
Order to dismantle radio tower in Manchester, Tennessee, owned by David Stiles dba Procom Towers (FCC No. 91-343)	52
Memorandum opinion and order on the policy and rules concerning rates for dominant carriers (FCC No. 91-344)	52

**Appendix III  
Circulated Decisions That Took the Longest  
Time to Release After the FCC  
Commissioners' Approval**

**Table III.3: Circulated Decisions in 1992 That Were Delayed the Longest Time Before Release**

<b>Decision</b>	<b>Days to release</b>
Memorandum opinion and order on the amendment of part 61 of the Commission's rules (FCC No. 92-248)	127
Tentative decision on the investigation of special access tariffs of local exchange carriers (FCC No. 92-488)	105
Notice of apparent liability for forfeiture for Mobilcomm of Virginia, Inc.—penalty for station KNKI 203 in the common carrier domestic public land mobile radio services at Churchville, Md. (FCC No. 92-154)	74
Notice of apparent liability for forfeiture for American Paging, Inc. (of Virginia)—penalty for station KNKD in the common carrier domestic public land mobile radio services at Churchville, Md. (FCC No. 92-155)	74
Notice of apparent liability for forfeiture for American Beeper Associates, Ltd., partners—penalty for station KNKL 636 in the common carrier domestic public land radio services at Churchville, Md. (FCC No. 92-156)	74
Notice of apparent liability for forfeiture for Alexander Mitchell Communications Corp.—penalty for broadcast radio station WSKS-FM, Milledgeville, Georgia (FCC No. 92-158)	74

**Table III.4: Circulated Decisions in 1993 That Were Delayed the Longest Time Before Release**

<b>Decision</b>	<b>Days to release</b>
Order on the amendment to part 63 of the Commission's rules (FCC No. 93-204)	116
Memorandum opinion and order on the Allnet Communication Services, Inc., complainant, v. U.S. West, Inc., et al., defendants (FCC No. 93-538)	76
Order on the liability of Madison Communications, Inc., Athens, Alabama, for a forfeiture (FCC No. 93-7)	62
Order on the liability of Port of Ilwaco, Washington, for a forfeiture (FCC No. 93-8)	62
Order on the liability of the Computer Force, Lakeland, Florida, for a forfeiture (FCC No. 93-9)	62
Memorandum opinion and order on AT&T, complainant, v. Central Telephone, et al., defendants. Damages were awarded to the complainant for defendants' violations of the Commission's rate-of-return prescription (FCC No. 93-152)	60

# Objectives, Scope, and Methodology

Concerned that the Federal Communications Commission (FCC) was taking an excessively long time to release decision documents after the Commissioners had voted, the Chairman, Subcommittee on Telecommunications and Finance, House Committee on Energy and Commerce, asked us to examine FCC's procedures for releasing the Commission's decision documents. As agreed with the Chairman's office, we (1) reviewed the timeliness of public release of FCC's decisions, (2) examined whether FCC's procedures for releasing documents contributed to delays in these releases and how FCC's procedures compare to those of the Nuclear Regulatory Commission (NRC) and the Securities and Exchange Commission (SEC), and (3) examined FCC's controls to determine whether revisions are made to decisions voted on by the Commissioners without their approval. In our response to these questions, we also included information that you requested on FCC's circulation voting process. Appendix I also provides information that the Chairman requested on FCC's ex parte contacts.

To determine the timeliness of FCC's public release of decisions, we reviewed and analyzed FCC's computer-generated lists of decisions voted on in meetings and through circulation for calendar years 1990 through 1993. For each decision, FCC's computer data included a brief description of the item voted, an FCC control number, the date voted, and the date the decision document was released. We measured timeliness as the difference between the date the item was voted on by the Commissioners and the date the document was released to the public. Several data discrepancies existed in FCC's computer-generated information, including missing and/or erroneous release dates, missing sequential control numbers, and duplicate entries. To resolve these discrepancies, we examined individual decision documents and obtained clarifying data from FCC's Acting Secretary. We did not independently verify the information in FCC's data base for each of the nearly 2,000 decisions voted on during the period covered by this review.

To determine whether FCC's procedures for releasing decision documents contribute to delays in these releases, we interviewed FCC's former Secretary, the Chief of Staff for the former Chairman, and officials in FCC's Office of General Counsel. We reviewed FCC's regulations, written procedures in FCC's Agenda Handbook, and FCC's annual reports to the Congress required by the Sunshine Act. On meeting and circulated decisions that took the longest time to release in each of the 4 calendar years, we examined FCC's public dockets and internal files maintained by the Secretary. To determine how FCC compared with NRC and SEC in the



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**Appendix IV**  
**Objectives, Scope, and Methodology**

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timely release of decision documents, we discussed decision release practices with the respective Secretaries and their staffs at NRC and SEC. We obtained and reviewed NRC and SEC (1) written procedures relating to their document release processes, (2) annual reports on the administration on the Sunshine Act, and (3) other pertinent documents. We also discussed general procedures that commissions may use for managing their decision workload with the General Counsel of the Administrative Conference of the United States.

To determine FCC's controls over revisions to and subsequent approval of decisions voted on by the Commissioners, we interviewed FCC's former Secretary, the Chief of Staff for the former Chairman, and officials in FCC's Office of General Counsel. We reviewed FCC's regulations and written procedures in FCC's Agenda Handbook. We attempted to verify the extent and nature of post-vote changes to decisions but were unable to do so because FCC did not maintain complete records of documents voted on or subsequent revisions made before a document was released.

To obtain information on FCC's circulation voting process and ex parte procedures, we reviewed FCC's regulations and discussed the process and procedures with FCC's former Secretary, the Chief of Staff of the former Chairman, and officials in FCC's Office of General Counsel. We reviewed FCC's public dockets and other files maintained by the Office of the Secretary for circulated decisions voted on in calendar years 1990 through 1993. We also discussed ex parte issues with the General Counsel of the Administrative Conference of the United States and reviewed the judicial history related to the use of ex parte contacts at federal commissions.

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