

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC DIRECTIVE	TITLE	
	Federal Advisory Committees	
	Directive Number: FCCINST 1126.2	Effective Date: August 31, 2011

1. **Purpose** - The purpose of this Directive is to set forth the Federal Communications (FCC or Commission) Commission's policy, administrative guidelines, and management controls relative to advisory committees as required by the Federal Advisory Committee Act (FACA or Act) as amended, 5 U.S.C., App 2; OMB Circular A-135, Management of Federal Advisory Committees; the General Services Administration's Federal Advisory Committee Management Final Rule, 41 CFR Parts 101-6 and 102-3; Executive Order 12024, Transfer of Certain Advisory Committee Functions; and Executive Order 12838, Termination and Limitation of Federal Advisory Committees.
2. **Background** - The Federal Advisory Committee Act was enacted in 1972 to ensure that advice by the various advisory committees formed over the years is objective and accessible to the public. The Act formalized a process for establishing, operating, overseeing, and terminating these advisory bodies. The Act requires each agency head to designate a Committee Management Officer (CMO) for the agency. The CMO exercises control and supervision over the establishment, procedures, and accomplishments of advisory committees, and establishes uniform guidelines and management controls for advisory committees established by the agency. The FCC Chairman designated the Deputy Managing Director as the CMO. The Associate Managing Director - Performance Evaluation and Records Management (AMD-PERM) is delegated administrative responsibility for the FCC's Federal Advisory Committee program.
3. **Cancellation** - This revised directive supersedes FCCINST 1126.1 effective September 9, 2004.
4. **Policy** - Advisory committees may be established as required or authorized by statute, by authority of the President, or at the discretion of the FCC Chairman. A discretionary advisory committee may be established only if it is essential to the conduct of agency business and if the information to be obtained from the

committee's work is not already available through another advisory committee or source within the federal government. The advisory committee's recommendations will provide an important additional perspective affecting agency policy or operations. In accordance with FACA, an advisory committee is chartered for a two-year term. It will automatically terminate at that time unless the FCC Chairman authorizes the committee for another two year term, or the Chairman terminates the committee prior to expiration of its current charter.

5. Scope - This Directive applies to advisory committees established by the Commission under the rules of the FACA. The following types of groups are excluded from FACA and this instruction:
 - a. Groups assembled to solicit individual advice or exchange facts or information;
 - b. Committees composed wholly of federal, state, local, or tribal officials (intergovernmental committees) or wholly of federal government employees (intragovernmental committees);
 - c. Any local civic group whose primary function is that of rendering a public service with respect to any Commission program.

6. Responsibilities:
 - a. FCC Chairman – The Chairman will:
 - (1) Designate a CMO to oversee federal advisory committees under FCC sponsorship.
 - (2) Establish federal advisory committees as necessary to provide information and recommendations on telecommunications policy matters.
 - (3) Appoint a Designated Federal Officer (DFO) for each committee established to serve as administrator for the committee.
 - (4) As a committee's charter expires, determine the need to continue the existing committee and approve its renewal.
 - (5) Appoint members of each federal advisory committee under FCC sponsorship as well as a committee chair.

 - b. Managing Director - The Managing Director will:
 - (1) Establish uniform administrative guidelines and management controls for all advisory committees consistent with FACA and implementing directives.

 - c. Committee Management Officer - The CMO will:
 - (1) Oversee all aspects of the FCC's Federal Advisory Committee program.
 - (2) Approve all actions concerning the establishment, termination and renewal of FCC advisory committees.
 - (3) Approve and certify the FCC's Annual Comprehensive Review of the agency's advisory committees chartered under FACA.

- (4) Delegate responsibility for administering the Federal Advisory Committee program to the Associate Managing Director/PERM.
- d. Associate Managing Director/PERM (AMD-PERM) - The AMD-PERM will:
- (1) Recommend revisions, as necessary, to the administrative guidelines and management controls for committees established by the Commission and make the necessary revisions to keep this directive current with guidelines issued by the General Services Administration (GSA).
 - (2) Serve as a resource for the Commission and staff on questions concerning the application and administration of FACA.
 - (3) Coordinate the administrative processes required for establishment, renewal, termination, and annual reporting on the committees.
 - (4) Advise a committee's DFO of the termination date of a committee 60 days in advance of such date.
 - (5) Review and consult with committee DFOs to complete the FCC's Annual Comprehensive Review of the agency's advisory committees chartered under FACA.
- e. Bureau and Office Chiefs Bureau and Office Chiefs will:
- (1) Recommend to the FCC Chairman the need to establish or renew an advisory committee and furnish to the Chairman information which will provide a basis for approving the recommendation.
 - (2) Recommend to the Chairman an FCC employee to serve as DFO for a committee and, if necessary, recommend an alternate DFO.
- f. Designated Federal Officer The DFO or alternate will:
- (1) Approve all advisory committee meetings and subcommittee meetings;
 - (2) Approve the agenda for all meetings;
 - (3) Attend all meetings of the committee;
 - (4) Adjourn any committee meeting whenever adjournment is determined to be in the public interest;
 - (5) Chair a committee meeting when so directed by the FCC Chairman.
 - (6) Assemble and maintain for his/her committee a complete set of (a) charters, (b) membership lists, (c) minutes or reports from the committee, and (d) records which fully disclose the disposition of funds, if any, at the disposal of each committee. The DFO is responsible for providing this information to GSA through its FACA database which serves as the source for the Annual

Comprehensive Review (ACR) of each agency's Federal Advisory Committee program.

- (7) Maintain a committee website that links from the FCC's website. The website will contain, at a minimum, the committee's current charter; list of members; list of subcommittees; reports and recommendations produced by the full committee; and meeting minutes, transcripts, and/or recorded webcasts and will be updated throughout the year.

g. Office of General Counsel. The OGC will:

- (1) Provide advice to the Chairman, CMO and DFOs concerning requirements of FACA and GSA's regulations implementing FACA.
- (2) Review proposed members of new and renewed federal advisory committees to ensure no conflicts of interest exist.

7. Establishment Procedures - Whenever the FCC Chairman directs the establishment of an advisory committee, the following procedures shall apply:

a. FCC and GSA Approval.

- (1) A memorandum recommending the establishment of the committee shall be submitted to the CMO from the proposed DFO for the committee along with a draft charter for the committee and a Membership Balance Plan as required by GSA. These documents should be submitted at least 60 days prior to the date the committee would begin operations.
- (2) The memorandum will identify:
 - (a) the nature, purpose, objectives and name of the proposed advisory committee;
 - (b) the reasons why a committee is needed and why the functions of the proposed committee cannot be performed by the staff or by an existing committee;
 - (c) the estimated time needed for the committee to complete its objectives;
 - (d) the estimated amount of staff time (expressed in FTEs) and cost to the Federal Government for, (i) support services provided to the committee and (ii) participation by Federal employees in the committee's work;
 - (e) the proposed plan to solicit membership nominations to attain balanced membership on the committee;
- (3) The committee charter will follow the format and contain the content found in GSA Guidance Document "Preparing Federal Advisory Committee Charters", dated January 29, 2009.
- (4) The Membership Balance Plan will follow the format and contain the elements found in GSA Guidance Document "Federal Advisory Committee Membership Balance Plan", dated January 2011.

- (5) Upon approval by the CMO to establish a committee, AMD/PERM will transmit to the GSA Committee Management Secretariat a request to establish a new federal advisory committee, including the proposed charter and Membership Balance Plan. GSA requests 15 calendar days for review, consultation, and concurrence with the request.

b. Notice of Establishment of Committee

- (1) When the GSA Committee Management Secretariat has advised the FCC of its concurrence with the establishment of the committee, the DFO for the committee will publish in the *Federal Register* at least 15 calendar days before the committee charter is filed, a notice which (i) advises of the establishment of the committee, (ii) certifies that creation of the committee is in the public interest, and (iii) sets forth the nature and purpose of the committee.
- (2) At the discretion of the DFO, a press release may be issued after publication of the notice in the *Federal Register* announcing establishment of the committee. This release may also be used to solicit nominations for committee members.

c. Filing Committee Charters

- (1) Fifteen days after the notice of establishment is published, AMD/PERM will file copies of the charter with a cover letter from the CMO to the Chair and Ranking Member of the FCC's Authorization and Appropriations Committees and Subcommittees, to the Library of Congress, and to the GSA Secretariat. This becomes the effective date on which the federal advisory committee may commence operations.
- (2) No committee shall meet to conduct any business or take action until a charter is filed. The term of the federal advisory committee is two years from the filing date of the charter.

d. Selection of Members

- (1) The membership of each committee shall be fairly balanced in terms of the points of view represented and the committee's function.
- (2) There shall be no discrimination in the selection of members on the basis of race, color, national origin, religion or gender.
- (3) Appropriate safeguards shall be included in the organization of the committee to assure that the committee's advice and recommendations will not be inappropriately influenced by any special interest.
- (4) Federally registered lobbyists shall not be appointed to advisory committees.

e. Subcommittees

- (1) The creation and operation of subcommittees to facilitate the work of an advisory committee must be approved by the FCC Chairman.
- (2) The requirements of FACA and GSA's regulations concerning federal advisory committees do not apply to subcommittees that report to a parent advisory committee and not directly to the FCC or its staff.

8. Renewal and Termination

a. Renewal

- (1) Sixty days in advance of the termination date of a committee, AMD/PERM will advise the DFO of the upcoming termination date and request a decision concerning whether or not to renew the committee's charter.
- (2) If a committee has not completed its work and there is need to continue its existence, and the committee's DFO has obtained approval from the Chairman's Office to renew the committee, the DFO will request that the CMO seek GSA approval for renewal. This request will be accompanied by a copy of the committee's charter and Membership Balance Plan including any applicable edits since the previous charter and Membership Balance Plan.
- (3) Upon approval by the CMO to establish a committee, AMD/PERM will transmit to the GSA Committee Management Secretariat a request to renew the committee, including a revised charter and Membership Balance Plan. GSA requests 15 calendar days for review, consultation, and concurrence with the request.
- (4) When the GSA Committee Management Secretariat has advised the FCC of its concurrence with the renewal of the committee, AMD/PERM will file copies of the charter with a cover letter from the CMO to the Chair and Ranking Member of the FCC's Authorization and Appropriations Committees and Subcommittees, to the Library of Congress, and to the GSA Secretariat. This becomes the effective date of the new charter and the date upon which the committee is officially renewed. The term of the renewed committee is two years from the filing date of the charter.
- (5) On or shortly after the effective date of renewal, the DFO for the committee will publish in the *Federal Register* a notice which advises of the renewal of the committee. No prior Federal Register notification is required.
- (6) At the discretion of the DFO, a press release may be issued announcing renewal of the committee. This release may also be used to solicit nominations for committee members.

- b. Termination – At the discretion of the FCC Chairman, a committee may be terminated at any time during the term of its charter if the committee has completed its work. AMD/PERM will notify the GSA Committee Secretariat and request its concurrence to terminate. Otherwise a committee shall terminate when its charter expires and renewal of the committee is not requested by the FCC.

10. Committee Operations

- a. Meetings - The following requirements govern the preparation for and conduct of committee meetings:
 - (1) No committee will hold any meetings except at the call or with the advance approval of the DFO.
 - (2) Each meeting of a committee shall be conducted in accordance with an agenda approved by the DFO. The agenda shall list the matters to be considered at the meeting and shall indicate whether any part of the meeting is concerned with matters that are within the exemptions of the Government in the Sunshine Act, 5 USC 552b(c). Normally copies of the agenda should be distributed to the members of the committee prior to the date of the meeting.
 - (3) No committee will conduct any meeting in the absence of the DFO or his/her designated alternate.
 - (4) Any federal advisory committee meeting must be announced in the *Federal Register* at least 15 days prior to the date of the meeting. The DFO is responsible for placing this notice in the *Federal Register* in a timely manner. The notice should contain:
 - (a) the name of the committee,
 - (b) the time and place of the meeting,
 - (c) purpose of the meeting and a summary of the agenda,
 - (d) information as to whether the meeting is open to the public or closed (if the meeting is closed state the reasons why, citing the specific exemptions in the Government in the Sunshine Act, 5 USC 552b(c) as the basis for closure),
 - (e) the name and telephone number of the DFO or other agency official who may be contacted for additional information concerning the meeting.
 - (5) In exceptional circumstances, the FCC may give less than 15 calendar days notice. The circumstances must be included in the notice, and the Office of General Counsel must give approval for publication of such notice
 - (6) Other means of informing the public of an upcoming meeting, such as press releases and announcements on the committee's website, should be utilized to the extent practicable.

b. Public Participation - Each advisory committee meeting shall be open to the public except as described in Section 10c below and shall be subject to the following:

- (1) The meeting shall be held at a reasonable time and at a place that is accessible to the public;
- (2) The meeting room shall be of reasonable size, considering the size of the committee, expected public attendance and resources available to the committee and the Commission. Any meeting conducted via webcast meets the requirements of (1) and (2) of this section;
- (3) Any member of the public can file a written statement before or after the meeting;
- (4) Interested persons may be permitted by the committee or its chairman to present oral statements to the extent that time available for the meeting permits and must be in accordance with existing committee procedures;
- (5) Participation other than by presentation of oral or written statements by members of the public in committee meetings or questioning of committee members shall not be permitted except in accordance with established committee procedures.

c. Closed Meetings - Entire committee meetings or portions thereof may be closed to the public if the expressed purpose of the meeting will be to discuss subject matter which is within the exemptions contained in the Government in the Sunshine Act (5 USC 552b).

- (1) Pursuant to subsection (c) of 5 USC 552b, a meeting or portions of a meeting may be closed where the DFO has determined that the proceedings are likely to:
 - (a) disclose matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;
 - (b) relate solely to the internal personnel rules and practices of the FCC;
 - (c) disclose matters specifically exempted from disclosure by statute (other than 5 USC 552), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;
 - (d) disclose trade secrets and commercial or financial information obtained from a person that is considered privileged or confidential;
 - (e) involve accusing any person of a crime, or formally censoring any person;

- (f) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (g) disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records, or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;
 - (h) disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.
- (2) A committee seeking to close a meeting (or portion thereof) must notify the CMO in writing at least 30 days before the date of meeting of its reasons for desiring to close the meeting. The CMO will make a determination in writing, including a brief statement of the reasons for the determination. After a closed meeting has been held, the CMO may review the appropriateness of the determination to close the meeting and take whatever corrective action may be required.
 - (3) Any determination made by the CMO to close a meeting shall be reviewed and approved by the Office of General Counsel.
 - (4) When a meeting (or portion) is closed, members of the committee shall not disclose the matters discussed, except with other members of the committee, the staff of the committee, or FCC employees.

d. Minutes - Detailed minutes shall be kept of each committee meeting including meetings of formal subgroups. The committee chairperson may designate a member or a person who is not a member to take the minutes. The committee chairperson, or if unable to attend, his delegate, shall certify to the accuracy of the minutes. At a minimum, the minutes shall contain:

- (1) the time, date, and place of the meeting;

- (2) a list of committee members and FCC employees present, along with the names of members of the public who presented oral or written statements;
- (3) a complete summary of matters discussed and conclusions reached;
- (4) copies of all reports issued or recommendations approved by the committee.

11. Access to Records

- a. Each committee shall make its records, reports and other documents available on the committee's website for public inspection and copying, except:
 - (1) access may be restricted on the basis of the exemptions contained in the Freedom of Information Act (FOIA), as amended, if there is a reasonable expectation that the records sought fall within the exemptions contained in section 552(b) of FOIA. When the only basis for denying access to a document is exemption (5), the CMO must make a positive determination that such a denial is essential to protect the free expression of internal views and to avoid interference with agency or advisory committee operations. This determination shall be reviewed and approved by the Office of General Counsel.
 - (2) access shall be only to records which relate directly to an open meeting or open portion of a meeting where parts of the meeting were closed. A copy of the determination to close the meeting shall be made available to the public on request.
- b. Committee records shall be available for public inspection until the committee ceases to exist.
- c. Requests for access to records not available on the committee's website should be directed to that committee's DFO.
- d. Any person whose request for access to committee records has been denied can request administrative review in accordance with 0.461(i) of the Commission's Rules.

12. Administrative Requirements

- a. Each Bureau or Office responsible for a committee shall provide the necessary support services to the committee. It may include in its budget submission a separate item for operation of committees.
- b. The DFO is responsible for maintaining financial records of expenditures made to facilitate the legitimate activities of their committee.

13. Annual Comprehensive Review

- a. The FCC will report to GSA on an annual basis, providing information on each federal advisory committee covered by FACA which is in existence during any part of a fiscal year.

- b. DFOs will provide required information concerning their committee, using a government-wide system that GSA maintains.
- c. The AMD-PERM and CMO will review the information for each committee and the CMO will certify to GSA that it is correct. This certification must be completed shortly after completion of a fiscal year by a deadline established by GSA.



Mindy J. Ginsburg
Deputy Managing Director