

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)
)
Reforming FCC Procedures) (No docket assigned.)

**REMARKS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

On November 18, 2013 (as revised November 19), the Special Counsel to the Chairman of the Federal Communications Commission (“Commission” or “FCC”) posted a blog entitled “A Call for Input: Improving Government Efficiency at the FCC.” The blog asked for “input” on how the FCC can:

- Streamline, update and eliminate inefficient, outdated or duplicative processes;
- Improve the effectiveness of communications between the public and the FCC;
- Make information collections and reports more focused, transparent and relevant;
- Expand the overall transparency of the workings of the agency; and
- [Provide a]ny other ideas to improve the focus, speed and efficiency of the FCC’s workflows.¹

The input is requested via e-mail.

The National Association of State Utility Consumer Advocates (NASUCA) submits these remarks. They are not comments: The Special Counsel did not ask for comments, and the blog does not appear to comply with the comment requirements of the Administrative Procedures Act (APA). The blog may have intended to continue a “dialog,” but up until now the conversation

¹ The text of the blog is attached.

has been conducted under the APA protections for industry, consumers and regulators. Thus NASUCA expects to provide further remarks in response to others' e-mails on this subject.

At this point, NASUCA will provide a single proposal to improve Commission procedures, which is based on recent and agonizing experience: Imposing the NASUCA rule change will provide incentive to “update and eliminate inefficient, outdated or duplicative processes,” including by “[m]ak[ing] information collections more focused”; and it will “[i]mprove the effectiveness of communications between the public and the FCC” by making FCC action more predictable, which will, of course, “[e]xpand the overall transparency of the workings of the agency....” Overall, it will “improve the focus, speed and efficiency of the FCC’s workflows.”

NASUCA’s proposal is that the Commission adopt a “shot-clock” of 180 days for acting on Petitions for Reconsideration.² The shot clock would deem such petitions denied unless the Commission had issued a dispositive order within 180 days of filing. The rule should provide that if the petitioner filed a request for extension, the clock would not expire until 360 days after filing of the original petition.

This proposal is based on NASUCA’s related experiences in WC Docket 10-90, et al. and in WC Docket No. 12-61, et al. . In the latter set of dockets, on May 17, 2013, the FCC “dismissed or denied” Petitions for Reconsideration of an order for which *NASUCA v. FCC*, DC Cir Case Nos. 08-1226 and 08-1353 had been held in abeyance. See *Petition of US Telecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket 12-61, et al., Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of

² Similar to the Commission procedures for mergers. cite

Proposed Rulemaking, FCC 13-69 (rel. May 17, 2013), ¶¶ 52. Those petitions for reconsideration had been pending since October 2008. This extreme delay effectively denied NASUCA its appeal rights.³

Then, relatedly, at oral argument on November 19, 2013, in the appeal from the *USF/ICC Transformation Order*,⁴ counsel for the FCC asserted that *Petroleum Commc'ns, Inc. v. FCC*, 22 F.3d 1164 (D.C. Cir. 1994), held that the APA's §405 exhaustion requirement is not satisfied until the agency has resolved the issue raised by a reconsideration petition. *Id.* at 1170-71. Although NASUCA has countered in a FRAP 28(j) letter to the 10th Circuit, it is correct that the FCC has not yet ruled on the D.C. Public Service Commission's Petition for Reconsideration timely filed in 2011. See WC Docket No. 10-90, et al., Petition for Reconsideration of the Public Service Commission of the District of Columbia (December 29, 2011).

Crucially, the D.C. Circuit has held that denial of reconsideration is not itself appealable. *Southwestern Bell Tel. Co. v. FCC*, 180 F.3d 307, 311 (D.C. Cir. 1999); *AT&T v. FCC*, 363 F.3d 504, 511 (D.C. Cir. 2004). The FCC has thus argued that its own inaction on this petition may preclude appellate review of an issue that is costing consumers millions of dollars each year.

Regardless of intention, Commission procedures cannot be changed by edict, whatever the perceived need for such changes to be done rapidly.⁵

Respectfully submitted,

Charles Acquard, Executive Director,

³ On September 23, 2012, the D.C. Circuit granted NASUCA's request to dismiss the appeals.

⁴ *In the Matter of Connect America Fund*, WC Docket No. 10-90, et al., Report And Order And Further Notice of Proposed Rulemaking ("*USF/ICC Transformation Order*") (adopted October 27, 2011, released November 18, 2011), FCC 11-161; appealed sub nom. *In Re FCC 11-161*, (10th Cir. oral argument held November 19, 2013).

⁵ See <http://www.fcc.gov/blog/opening-day-fcc-perspectives-challenges-and-opportunities>.

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TEXT OF SENIOR COUNSEL'S BLOG (accessed 12/1/13)

As Chairman Wheeler announced in his initial [blog post](#) upon joining the FCC, improving agency processes and procedures to more efficiently and effectively serve the public interest is one of his top priorities. As Special Counsel to Chairman Wheeler, I have been tasked with developing a plan within the next 60 days that includes recommendations on how best to tackle the challenge of reforming FCC processes.

In connection with that effort, we are soliciting public input on improving the efficiency of how we conduct business here at the FCC. We know that stakeholders who interact with the FCC will have many thoughts on *substantive* reforms that the agency should undertake, but for this effort, we are particularly interested in your ideas and insights to improve the efficiency of the *process* at the FCC.

Please email your thoughts and ideas on FCC process reform to innovation@fcc.gov (note that comments related to specific ongoing proceedings should be filed in those dockets and not in response to this blog post). ***PLEASE SUBMIT YOUR INPUT AS SOON AS POSSIBLE, BUT NO LATER THAN DECEMBER 2nd, SO THAT WE HAVE SUFFICIENT TIME TO EVALUATE RESPONSES.***

In particular, we are interested in any thoughts on what concrete steps the FCC can take to:

- Streamline, update and eliminate inefficient, outdated or duplicative processes;
- Improve the effectiveness of communications between the public and the FCC;
- Make information collections and reports more focused, transparent and relevant;
- Expand the overall transparency of the workings of the agency; and
- Any other ideas to improve the focus, speed and efficiency of the FCC's workflows.

This is only the beginning of this round of process reform efforts at the FCC, which builds on the many steps taken in past years. We hope to have an ongoing dialogue both internally and externally about what the agency can do to be more responsive, efficient, and effective. Your insights will be useful to developing recommendations for process reform, and we look forward to hearing your ideas and incorporating them into my report and recommendations to Chairman Wheeler. *Please note that any information you submit to innovation@fcc.gov will be made public in connection with my report to the Chairman.*

Thank you in advance for your input!

Diane Cornell
Special Counsel to Chairman Tom Wheeler