



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

Patricia Moloney Figliola

Specialist in Internet and Telecommunications Policy

January 12, 2012

Congressional Research Service

7-5700

www.crs.gov

RL32589

CRS Report for Congress

Prepared for Members and Committees of Congress

Summary

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

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

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

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

Contents

FCC-Related Congressional Action—112 th Congress	1
Cost-Benefit Analysis of Proposed Rulemaking	1
FCC Analysis of Benefits and Costs Act of 2011 (H.R. 2289)	1
Commission Collaboration	1
Federal Communications Commission Process Reform Act (H.R. 3309) Federal Communications Commission Process Reform Act (S. 1784) Telecommunications Jobs Act (S. 1817)	1
Federal Communications Commission Collaboration Act (H.R. 1009)	2
Report Consolidation and Paperwork Reduction	2
Federal Communications Commission Consolidated Reporting Act (H.R. 3310) Federal Communications Commission Consolidated Reporting Act (S. 1780)	2
Enhancing the Technical Expertise of the Commission	2
FCC Technical Expertise Capacity Heightening Act (S. 611) and FCC Commissioners' Technical Resource Enhancement Act (H.R. 2102)	2
FCC-Related Government Accountability Office Studies	3
Enforcement Program Management (February 2008)	3
Equal Access to Rulemaking Information (September 2007)	4
FCC Budget and Authorization	4
FY2012 Budget	5
FCC Authorization	5
Overview of the FCC	5
FCC Leadership	7
FCC Structure	7
FCC Strategic Plan	8
Proposals for Change	9
Potential Procedural Changes	9
Adoption/Release of Orders	9
Sunshine Rules	9
Timeliness	10
Enforcement	10
Potential Substantive Changes	10

Contacts

Author Contact Information	11
----------------------------------	----

FCC-Related Congressional Action—112th Congress¹

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

Cost-Benefit Analysis of Proposed Rulemaking

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

H.R. 2289, also called the “FCC ABCs Act,” was introduced by Representative Robert Latta in the House Committee on Energy and Commerce on June 22, 2011. The bill was referred to the Subcommittee on Communications and Technology June 22, 2011.

- H.R. 2289 Summary: This bill would require the Federal Communications Commission (FCC) to include in each notice of proposed rule making and in each final rule issued by the FCC an analysis of the benefits and costs of such proposed rule or final rule. It would prohibit any appropriations for the express purpose of carrying out this act.

Commission Collaboration

Federal Communications Commission Process Reform Act (H.R. 3309)

Federal Communications Commission Process Reform Act (S. 1784)

Telecommunications Jobs Act (S. 1817)

H.R. 3309 was introduced by Representative Greg Walden in the House Committee on Energy and Commerce on November 2, 2011, and was approved by the Subcommittee on Communications on November 16, 2011. S. 1784 was introduced by Senator Dean Heller in the Senate Committee on Commerce, Science, and Transportation on November 2, 2011.

- H.R. 3309 and S. 1817 Summary: This bill would require the FCC to (1) survey the state of the marketplace through a notice of inquiry before initiating every new rulemaking; (2) identify a market failure, consumer harm, or regulatory barrier to investment before adopting “economically significant” rules, as well as demonstrate that the benefits of the regulation outweigh the costs; (3) make the full text of a rule available to the public for 30 days of comments and 30 days of reply comments prior to voting on the proposed rule, and issue a final rule within three years; and (4) set “shot clocks” for orders, decisions, reports, or actions.

S. 1817 was introduced by Senator Dean Heller in the Senate Committee on Commerce, Science, and Transportation on November 8, 2011.

- S. 1817 Summary: This bill is substantially similar to S. 1784.

¹The 110th Congress assigned responsibility for FCC appropriations process to the Subcommittee on Financial Services within the Committee on Appropriations, where it remained in the 111th Congress.

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

H.R. 1009 was introduced by Representative Anna Eshoo in the House Committee on Energy and Commerce on March 10, 2011. The bill was referred to the Subcommittee on Communications and Technology on March 15, 2011.

- H.R. 1009 Summary: This bill would amend the Communications Act of 1934 to allow, notwithstanding a specified open meeting provision, three or more commissioners of the Federal Communications Commission (FCC) to hold a meeting that is closed to the public to discuss official business if (1) no agency action is taken; (2) each person present is an FCC commissioner or employee; (3) for each political party of which any commissioner is a member, at least one commissioner who is a member of the respective party is present, and, if any commissioner has no party affiliation, at least one unaffiliated commissioner is present; and (4) an attorney from the FCC's Office of General Counsel is present. It would require public disclosure of the meeting, attendees, and matters discussed.

Report Consolidation and Paperwork Reduction

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

H.R. 3310 was introduced by Representative Steve Scalise in the House Committee on Energy and Finance on November 2, 2011, and was approved by the Subcommittee on Communications on November 16, 2011. S. 1780 was introduced by Senator Dean Heller in the Senate Committee on Commerce, Science, and Transportation on November 2, 2011.

- H.R. 3310 and S. 1780 Summary: This bill would amend the Communications Act of 1934 to consolidate the reporting obligations of the FCC to improve oversight and reduce reporting burdens.

Enhancing the Technical Expertise of the Commission

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

H.R. 2102, also called the "FCC TECH Act," was introduced by Representative Cliff Stearns in the House Committee on Energy and Commerce on June 2, 2011. The bill was referred to the Subcommittee on Communications and Technology on June 3, 2011.

- H.R. 2102 Summary: This bill would amend the Communications Act of 1934 to permit each commissioner of the FCC to appoint an electrical engineer or computer scientist to provide technical consultation and to interface with the Office of Engineering and Technology and other FCC bureaus and technical staff. It would require such engineer or scientist to hold an undergraduate or graduate degree in his or her field of expertise.

S. 611 was introduced by Senator Olympia Snowe in the Senate Committee on Commerce, Science, and Transportation on March 17, 2011.

- S. 611 Summary: This bill is substantially similar to its companion bill, H.R. 2102, but unlike that bill, S. 611 also includes a requirement that the FCC “enter into an arrangement with the National Academy of Sciences to complete a study of the technical policy decision making and the technical personnel at the Commission.”

FCC-Related Government Accountability Office Studies

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

Enforcement Program Management (February 2008)²

According to the GAO analysis of FCC data, between 2003 and 2006, the number of complaints received by the FCC totaled about 454,000 and grew from almost 86,000 in 2003 to a high of about 132,000 in 2005. The largest number of complaints related to violations of the do-not-call list and telemarketing during prohibited hours. The FCC processed about 95% of the complaints it received. It also opened about 46,000 investigations and closed about 39,000; approximately 9% of these investigations were closed with an enforcement action and about 83% were closed with no enforcement action. The GAO was unable to determine why these investigations were closed with no enforcement action because the FCC does not systematically collect these data. The FCC told GAO that some investigations were closed with no enforcement action because no violation occurred or the data were insufficient.

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

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

² GAO, Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, “FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations, and Additional Actions Are Needed,” February 15, 2008, available at <http://www.gao.gov/new.items/d08125.pdf>.

Equal Access to Rulemaking Information (September 2007)³

In September 2007, GAO released a study, conducted in response to a congressional request, on the FCC's rulemaking process. Specifically, the GAO studied four rulemakings as case studies to determine the extent to which the FCC followed the steps for rulemakings required by law, including those related to public participation.⁴

The GAO found that while the FCC generally followed the rulemaking process in the four case studies and most ex parte filings complied with FCC rules, several stakeholders had access to nonpublic information. For example, in discussions with some stakeholders that regularly participate in FCC rulemakings, multiple stakeholders generally knew when the commission scheduled votes on proposed rules well before FCC notified the public, even though FCC rules prohibit disclosing this information outside of FCC. Other stakeholders said that they could not learn when rules were scheduled for a vote until FCC released the public meeting agenda, at which time FCC rules prohibit stakeholders from lobbying FCC. As a result, stakeholders with advance information about which rules are scheduled for a vote would know when it would be most effective to lobby FCC, while stakeholders without this information would not.

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

FCC Budget and Authorization

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

Most of the FCC's budget is derived from regulatory fees collected by the agency rather than through a direct appropriation.⁵ The fees, often referred to as "Section (9) fees," are collected

³ GAO, Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, "FCC Should Take Steps to Ensure Equal Access to Rulemaking Information," September 6, 2007, available online at <http://www.gao.gov/new.items/d071046.pdf>.

⁴ The FCC generally begins the rulemaking process by releasing a Notice of Proposed Rulemaking, or "NPRM," and establishing a docket to gather information submitted by the public or developed within the FCC to support the proposed rule. Outside parties are permitted to meet with FCC staff, but must file a disclosure in the docket, called an ex parte filing, that includes any new data or arguments presented at the meeting. Once the FCC staff has analyzed information in the docket and drafted a final rule, the commissioners vote on whether to adopt it. The FCC chairman decides which rules the commission will consider and whether to adopt them by vote at a public meeting or by circulating them to each commissioner for approval. Stakeholders unsatisfied with a rule may file a petition for reconsideration with the commission or petition for review in federal court.

⁵ The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, 47 U.S.C. §159) requires that the FCC annually collect fees and retain them for FCC use to offset certain costs incurred by the Commission. The FCC implemented the regulatory fee collection program by rulemaking on July 18, 1994.

from license holders and certain other entities (e.g., cable television systems) and deposited into an FCC account. The law gives the FCC authority to review the regulatory fees and to adjust the fees to reflect changes in its appropriation from year to year. Most years, appropriations language prohibits the use by the Commission of any excess collections received in the current fiscal year or any prior years. These funds remain in the FCC account and are not made available to other agencies or agency programs nor redirected into the Treasury's general fund.

FY2012 Budget

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

The budget also included language to (1) extend the suspension of the application of the Anti-Deficiency Act to the Universal Service Fund until the end of 2013 and (2) prohibit the FCC from using any appropriated funds to “modify, amend, or change its rules or regulations for universal service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments.”

FCC Authorization

The FCC was last formally authorized in the FCC Authorization Act of 1990 (P.L. 101-396).

Overview of the FCC

The Federal Communications Commission (FCC) is an independent federal agency with its five members appointed by the President, subject to confirmation by the Senate. It was established by the Communications Act of 1934 (1934 Act or “Communications Act”⁶ and is charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.⁷ The mission of the FCC is to ensure that the American people have available, “without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient,

⁶ The Communications Act of 1934, 47 U.S.C. §151 et seq., has been amended numerous times, most significantly in recent years by the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (1996). References in this report are to the 1934 Act, as amended, unless indicated. A compendium of communications-related laws is available from the House Committee on Energy and Commerce at <http://energycommerce.house.gov/108/pubs/108-D.pdf>. It includes selected Acts within the jurisdiction of the Committee, including the Communications Act of 1934, Telecommunications Act of 1996, Communications Satellite Act of 1962, National Telecommunications and Information Administration Organizations Act, Telephone Disclosure and Dispute Resolution Act, Communications Assistance for Law Enforcement Act, as well as additional communications statutes and selected provisions from the United States Code. The compendium was last amended on December 31, 2002.

⁷ See About the FCC, available online at <http://www.fcc.gov/aboutus.html>.

Nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges.”⁸

The 1934 Act is divided into titles and sections that describe various powers and concerns of the Commission.⁹

- Title I—FCC Administration and Powers. The 1934 Act originally called for a commission consisting of seven members, but that number was reduced to five in 1983. Commissioners are appointed by the President and approved by the Senate to serve five-year terms; the President designates one member to serve as chairman. No more than three commissioners may come from the political party of the President. Title I empowers the Commission to create divisions or bureaus responsible for specific work assigned and to structure itself as it chooses.
- Title II—Common carrier regulation, primarily telephone regulation, including circuit-switched telephone services offered by cable companies. Common carriers are communication companies that provide facilities for transmission but do not originate messages, such as telephone and microwave providers. The 1934 Act limits FCC regulation to interstate and international common carriers, although a joint federal-state board coordinates regulation between the FCC and state regulatory commissions.
- Title III—Broadcast station requirements. Much existing broadcast regulation was established prior to 1934 by the Federal Radio Commission and most provisions of the Radio Act of 1927 were subsumed into Title III of the 1934 Act. Sections 303-307 define many of the powers given to the FCC with respect to broadcasting; other sections define limitations placed upon it. For example, Section 326 of Title III prevents the FCC from exercising censorship over broadcast stations. Also, parts of the U.S. code are linked to the Communications Act. For example, 18 U.S.C. 464 makes obscene or indecent language over a broadcast station illegal.
- Title IV—Procedural and administrative provisions, such as hearings, joint boards, judicial review of the FCC’s orders, petitions, and inquiries.
- Title V—Penal provisions and forfeitures, such as violations of rules and regulations.
- Title VI—Cable communications, such as the use of cable channels and cable ownership restrictions, franchising, and video programming services provided by telephone companies.
- Title VII—Miscellaneous provisions and powers, such as war powers of the President, closed captioning of public service announcements, and telecommunications development fund.

⁸ 47 U.S.C. §151.

⁹ When Congress established the FCC in 1934, it merged responsibilities previously assigned to the Federal Radio Commission, the Interstate Commerce Commission, and the Postmaster General into a single agency, divided into three bureaus, Broadcast, Telegraph, and Telephone. See Analysis of the Federal Communications Commission, Fritz Messere, available online at <http://www.oswego.edu/~messere/FCC1.html> and the Museum of Broadcast Communications Archive at <http://www.museum.tv/archives/etv/F/htmlF/federalcommu/federalcommu.htm> for additional information on the history of the FCC.

FCC Leadership

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

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

There are currently two vacancies at the Commission.

FCC Structure

The day-to-day functions of the FCC are carried out by 7 bureaus and 10 offices. The current basic structure of the FCC was established in 2002 as part of the agency's effort to better reflect the industries it regulates. The seventh bureau, the Public Safety and Homeland Security Bureau, was established in 2006.

The bureaus process applications for licenses and other filings, analyze complaints, conduct investigations, develop and implement regulatory programs, and participate in hearings, among other things. The offices provide support services. Bureaus and offices often collaborate when addressing FCC issues.¹⁰ The bureaus hold the following responsibilities:

- Wireline Competition Bureau—Administers the FCC's policies concerning common carriers—the companies that provide long distance and local service to consumers and businesses. These companies provide services such as voice, data, and other telecommunication transmission services.
- Enforcement Bureau—Enforces FCC rules, orders, and authorizations.
- Wireless Telecommunications Bureau—Handles all FCC domestic wireless telecommunications programs and policies.¹¹ Wireless communications services include cellular, paging, personal communications services, public safety, and other commercial and private radio services. This bureau also is responsible for implementing the competitive bidding authority for spectrum auctions.
- Media Bureau—Develops, recommends, and administers the policy and licensing programs relating to electronic media, including cable television, broadcast television and radio in the United States and its territories.
- Consumer and Governmental Affairs Bureau—Addresses all types of consumer-related matters from answering questions and responding to consumer complaints to distributing consumer education materials.

¹⁰ FCC Fact Sheet, available at <http://www.fcc.gov/cgb/consumerfacts/aboutfcc.html>.

¹¹ Except those involving satellite communications broadcasting, including licensing, enforcement, and regulatory functions. These functions are handled by the International Bureau.

- International Bureau—Administers the FCC’s international telecommunications policies and obligations.
- Public Safety and Homeland Security Bureau—Addresses issues such as public safety communications, alert and warning of U.S. citizens, continuity of government operations and continuity of operations planning, and disaster management coordination and outreach.¹²

The only FCC office that conducts regulatory proceedings is the Office of Engineering and Technology, which advises the FCC on engineering matters. However, the Office of Administrative Law Judges also conducts hearings and issues initial decisions. Other offices are the Office of Communication Business Opportunities, Office of the General Counsel, Office of the Inspector General, Office of Legislative Affairs, Office of the Managing Director, Office of Media Relations, Office of Strategic Planning and Policy Analysis, and Office of Workplace Diversity.¹³

FCC Strategic Plan

In 2009, the FCC adopted a new five-year strategic plan promoting six goals relating to broadband, competition, spectrum, media, homeland security, and FCC modernization:

- **Broadband.** All Americans should have affordable access to robust and reliable broadband products and services. Regulatory policies must promote technological neutrality, competition, investment, and innovation to ensure that broadband service providers have sufficient incentive to develop and offer such products and services.¹⁴
- **Competition.** Competition in the provision of communications services, both domestically and overseas, supports the nation’s economy. The competitive framework for communications services should foster innovation and offer consumers reliable, meaningful choice in affordable services.¹⁵
- **Spectrum.** Efficient and effective use of non-federal spectrum domestically and internationally promotes the growth and rapid deployment of innovative and efficient communications technologies and services.¹⁶
- **Media.** The nation’s media regulations must promote competition and diversity and facilitate the transition to digital modes of delivery.¹⁷
- **Public Safety and Homeland Security.** Communications during emergencies and crises must be available for public safety, health, defense, and emergency

¹² For additional information on this bureau, which was formally established in September 2006, please refer to <http://www.fcc.gov/pshs/>.

¹³ Responsibilities of each of the offices is detailed online at the FCC website at <http://www.fcc.gov/aboutus.html>.

¹⁴ FCC Strategic Plan, FY2006-FY2011, p. 3.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

personnel, as well as all consumers in need. The nation's critical communications infrastructure must be reliable, interoperable, redundant, and rapidly restorable.¹⁸

- **FCC Modernization.** The FCC shall strive to be a highly productive, adaptive, and innovative organization that maximizes the benefit to stakeholders, staff, and management from effective systems, processes, resources, and organizational culture.

Proposals for Change

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

Potential Procedural Changes

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

Adoption/Release of Orders

The FCC often adopts orders and issues press releases with a summary of the order weeks or even months prior to releasing the order itself. For example, the Triennial Review, which dealt with controversial issues relating to competition in the local telecommunications market, and the 800 MHz order, which dealt with controversial and technically complicated issues related to interference to public safety communications, were released six months and one month, respectively, after they were officially adopted by the Commission. Some congressional policymakers have discussed instituting a “shot clock,” which would require the FCC to issue the actual order within a set time frame after it adopts the order and issues a press release.

Sunshine Rules

Under current “sunshine laws,”¹⁹ only two commissioners may meet outside the construct of an official “open meeting.” While such a requirement, in theory, promotes open discussion of issues under consideration, in reality, most Commission business is conducted by circulating drafts of orders for comment. Further, the open meeting requirement may actually hinder discussion among the commissioners, especially in cases where the disagreement on the draft is significant. In such cases, it might be possible for further compromise if a third or fourth commissioner could be involved in the discussion. While the FCC cannot institute such changes without congressional

¹⁸ Ibid.

¹⁹ The Government in the Sunshine Act, P.L. 94-409, was passed in 1976. It requires that all federal agencies with units that work independently of each other hold their meetings in public session. The bill explicitly defined meetings as essentially any gathering. Many federal agencies, most notably the independent regulatory agencies, including the FCC, are headed by multiple commissioners. These agencies make most of their decisions through discussions and voting by the board or commission members. This law was created so that these meetings would be in the public domain for all to review. Additional information on this law is available online at http://www.everything2.com/index.pl?node_id=1161139.

amendment to current sunshine requirements, it could be useful to study how other agencies, which do not employ circulation as much as the FCC, work through contentious issues on their agendas. In the past, criticism has been aimed at the sunshine requirements because they could be seen as pushing too much power to the staff and not allowing more than two commissioners to be in the same room at one time.²⁰

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

Timeliness

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

Enforcement

Enforcement of agency rules is currently the responsibility of the FCC’s Enforcement Bureau. Previously, enforcement responsibilities were held by a division within each bureau. For example, enforcement of “slamming”²¹ was done by a division within what was then the Common Carrier Bureau (now called the Wireline Competition Bureau). Some policymakers have questioned whether the current “unified” structure is more effective than the previous “diversified” structure and have suggested studying the issue.

Potential Substantive Changes

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

²⁰ “Stevens to Continue Listening Sessions, But Sees Telecommunications Bill by July,” Daily Report for Executives, No. 51, March 17, 2005, Page A-1. This article is available online at <http://ippubs.bna.com/IP/BNA/der.nsf/SearchAllView/96C56942C092C93B85256FC70014F11F?Open&highlight=FCC,SUNSHINE>.

²¹ “Slamming” is the illegal practice of changing a consumer’s telephone service, whether local, intralata service, or interlata service (including state to state, in state and international long distance), without permission. See <http://www.fcc.gov/slamming/> for additional information.

Some policymakers have been critical of the FCC and the manner in which it regulates various sectors of the telecommunications industry—telephone, cable television, radio and television broadcasting, and some aspects of the Internet, including net neutrality. These policymakers, including some in Congress, and various interest group and think tank experts, have long called for varying degrees and types of reform to the FCC. Some have called for significantly downsizing the agency by eliminating its regulatory functions and transforming it into an enforcement agency.²² Others have suggested abolishing the agency and parceling out its functions to other agencies.²³ Others still call for more regulation (e.g., indecency).

Author Contact Information

Patricia Moloney Figliola
Specialist in Internet and Telecommunications
Policy
pfigliola@crs.loc.gov, 7-2508

²² See, for example, “How to Reform the FCC,” by Randolph J. May, June 21, 2004, available at http://news.com.com/How+to+reform+the+FCC/2010-1071_3-5236715.html.

²³ For example, under such a scenario, the FCC would no longer be responsible for reviewing and approving mergers between companies; instead, the Department of Justice would provide anti-trust review. See, e.g., “Why the FCC Should Die,” by Declan McCullagh, June 7, 2004, available online at <http://news.com.com/2010-1028-5226979.html>; and “Law and Disorder in Cyberspace: Abolish the FCC and Let Common Law Rule the Telecosm,” 1997, information available at <http://www.phuber.com/huber/cl/cl.htm>.