



Highlights of [GAO-07-1046](#), a report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives

Why GAO Did This Study

The Federal Communications Commission (FCC) is charged with regulating interstate and international communications by radio, television, wire, satellite, and cable. The Telecommunications Act of 1996 established that FCC should promote competition and reduce regulation to secure lower prices and higher-quality services for American consumers. FCC implements its policy aims through rulemaking, whereby the agency notifies the public of a proposed rule and provides an opportunity for the public to participate in the rule's development. These rulemakings are documented within a public docket that contains the rulemaking record.

In response to a congressional request on FCC rulemaking, GAO (1) described FCC's rulemaking process; (2) determined, for specific rulemakings, the extent to which FCC followed its process; and (3) identified factors that contributed to some dockets and rulemakings remaining open. GAO reviewed recent FCC rules, interviewed FCC officials and stakeholders, and conducted case studies of rulemakings.

What GAO Recommends

To ensure transparency in the rulemaking process, GAO recommends that the FCC Chairman take steps to ensure equal access to rulemaking information. FCC took no position on GAO's recommendation.

www.gao.gov/cgi-bin/getrpt?GAO-07-1046.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Mark Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

TELECOMMUNICATIONS

FCC Should Take Steps to Ensure Equal Access to Rulemaking Information

What GAO Found

FCC's rulemaking process includes multiple steps as outlined by law, with several opportunities for public participation. FCC generally begins the process by releasing a Notice of Proposed Rulemaking and establishing a docket to gather information submitted by the public or developed within FCC to support the proposed rule. Outside parties may meet with FCC officials but must file a disclosure in the docket, called an ex parte filing, that includes any new data or arguments presented at the meeting. FCC analyzes information in the docket and drafts a final rule for the commission to adopt. 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.

FCC generally followed the rulemaking process in the four case studies of completed rulemakings that GAO reviewed, but several stakeholders had access to nonpublic information. Specifically, each of the four rulemakings included steps as required by law and opportunities for public participation. Within the case studies, most ex parte filings complied with FCC rules. However, in the case studies and in discussions with other 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. FCC rules prohibit disclosing this information outside of FCC. Other stakeholders said that they cannot learn when rules are scheduled for a vote until FCC releases 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 is most effective to lobby FCC, while stakeholders without this information would not.

The complexity and number of rulemakings within a docket and the priority the commission places on a rulemaking contribute to dockets and rulemakings remaining open. The commission determines when to open and close a docket and which rulemakings are a priority; therefore, the commission determines how a docket and rulemaking progress. Dockets and the rulemakings within them may remain open because the dockets are broad and include multiple rulemakings, or because the commission has not yet voted to close the dockets even though they include completed rules. Within dockets, some rulemakings may remain open because they involve complex, technical issues or because competing priorities can force FCC officials to work on one rulemaking as opposed to another. Stakeholders generally said they are not concerned about the number of open dockets.