

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
Report on FCC Process Reform ) GN Docket No. 14-25  
)  
)

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)<sup>1</sup> hereby responds to the Commission’s call for comment on recommendations contained in the above-referenced “Report on FCC Process Reform” (*Report*).<sup>2</sup> As a general matter, the Commission’s efforts to review and improve its operations and performance are appropriate, and NAB agrees that a number of the recommendations are worthy of implementation. The way in which the Commission conducts its business is an important part of the agency’s obligation to promote the public interest.

In a 21<sup>st</sup> century communications environment, the Commission should improve its ability to work collaboratively with stakeholders to reach rational, well-grounded decisions in complex rulemakings. The agency also should work to more quickly and clearly convey information both to parties who routinely interact with the Commission and members of the general public. Given challenging budgetary constraints, recommendations to enhance the Commission’s efficiency and promote quicker action on licensing, adjudications and rulemakings would benefit both the agency and regulated entities. Finally, as the Commission understands, improving the FCC’s technological capabilities should serve multiple purposes –

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<sup>1</sup> The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

<sup>2</sup> Diane Cornell and Staff Working Group, Report on FCC Process Reform (rel. Feb. 14, 2014).

not the least of which is to make the agency's operations more transparent and accountable to Congress, regulated entities, and the public that the agency ultimately serves.<sup>3</sup>

Many of the recommendations in the *Report* relate to the Commission's purely internal functions, which are best left to the agency. The comments below address select proposals that are likely to deliver benefits to regulated entities and the general public. These recommendations fall into three broad categories: (1) greater reliance on multi-stakeholder mechanisms, (2) improved operational transparency, and (3) enhanced agency efficiency.

## **I. EXPLORING EXPANDED USE OF MULTI-STAKEHOLDER MECHANISMS**

The Commission should act on the staff recommendation to employ mechanisms that allow for greater collaboration with outside stakeholders and industry experts as part of its policymaking process (**Rec. 3.1**). Multi-stakeholder groups can supplement the Commission's expertise, potentially expediting the process and delivering better outcomes in rulemaking proceedings (**Recs. 3.1.1 and 3.1.2**).

The FCC's long and productive experience with the FCC Advisory Committee on Advanced Television Service (ACATS) illustrates this point. Beginning in 1987, the multi-industry group of engineers and other professionals used their resources and expertise to guide the technology developed by the HDTV Grand Alliance and the complex-but-flexible digital television standard documented by the Advanced Television Systems Committee (ATSC). The FCC ultimately adopted this standard in 1996. The Commission would have been hard-pressed to reach the same technologically successful and legally sustainable result without ACATS, and ATSC continues to this day to provide a cooperative forum for development of technical

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<sup>3</sup> In recent testimony before Congress, Chairman Wheeler stated that the FCC needed to overhaul, upgrade and replace inefficient and unreliable IT systems that hindered the agency's administrative and regulatory activities. Testimony of Chairman Tom Wheeler, Before the Senate Subcommittee on Financial Services and General Government Committee on Appropriations, Mar. 27, 2014.

standards representing the latest in DTV innovation. The FCC should consider creating similar multi-stakeholder advisory entities – and recognize collaborative coalitions that arise on their own – particularly with respect to technical matters.

In a similar vein, the FCC should explore opportunities for engaging in negotiated rulemakings (**Rec. 3.3**). Such proceedings can allow parties to exchange information, share concerns, and work together to achieve solutions to difficult issues. As the *Report* states, negotiated rulemakings typically are effective where there are a set number of identifiable interests, and the various stakeholders are adequately represented and willing to reach a consensus-driven outcome. Other agencies employing negotiated rulemakings have found that giving parties a direct hand in the decision making process results in rules that are (1) more pragmatic, (2) more easily implemented and enforced, and (3) more sensitive to the positions of the various stakeholders. Unsurprisingly, these rules also are less likely to be challenged in court.<sup>4</sup>

## **II. IMPROVING TRANSPARENCY OF FCC DECISIONMAKING**

Making certain Commission processes more transparent should yield multiple benefits. Increased information-sharing by the FCC will strengthen the agency’s relationship with industry stakeholders and consumers alike, which can lead to more productive discourse and collaborative decision-making. Increased transparency also will make the Commission more accountable for its performance, which should lead to better governance and improved service to the public.

A number of the *Report’s* recommendations essentially call for the agency to hold its own feet to the fire, and the Commission should not shy away from doing so. For example, the FCC should act quickly to post information about its budget and appropriations (**Rec. 1.7**). This

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<sup>4</sup> See, e.g., “Negotiated Rulemaking Fact Sheet,” at <http://www.epa.gov/adr/factsheetregneg.pdf>, and “What is Negotiated Rulemaking?” at <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5089434>.

information, coupled with clear and up-to-date information regarding the status of pending and backlogged items (**Recs. 1.20 & 1.21**), will afford the FCC's congressional oversight committees a better understanding of how well the Commission is functioning with its available resources. Outside parties also would benefit from such information, enabling them to readily track the progress of pending items (and possibly spare the agency staff some status calls as a result).

Adoption of these recommendations would support better governance generally. Even the act of preparing to publicly reveal the status of pending matters would require the agency's career professional staff and its appointed leadership to focus regular attention on the pace of routine processing tasks as well as on more high-profile matters. Such an outcome, if it becomes routine, could be a particularly beneficial discipline as Commission leadership changes over time – after all, every administration faces these same challenges. Public reporting on pending matters could help the FCC identify dormant or procedurally defective items that are ripe for dismissal, while also allowing outside parties to withdraw petitions they are no longer interested in pursuing. Clearing away dormant and defective items could help conserve staff resources, allow the agency to more accurately prioritize its workload, and align staff resources accordingly. As a result, the Commission would be better positioned to improve its service to the public.

The FCC also can, and should, swiftly implement the *Report* recommendations that would assist experienced stakeholders, such as licensees and their counsel, and interested members of the public. In particular, the Commission should publicly post more comprehensive information on the FCC's subject-matter experts (**Rec. 4.1**), make the agency's Freedom of Information Act (FOIA) operations and outcomes more transparent (**Recs. 1.8 and 1.9**), and expand the functionality of the Electronic Comment Filing System (ECFS) (**Rec. 1.4**).

Publishing all documents released in the FOIA process, including initial decisions, would better demonstrate the Commission's compliance with its statutory obligations, and it could assist private parties in fashioning grantable FOIA requests while avoiding duplicative requests.<sup>5</sup> Similarly, including status information in ECFS on all docketed proceedings would help the public better track matters of interest – and may help FCC staffers with internal tracking and management tasks as well.

The *Report* offers several useful recommendations for consumer complaint intake and “closeout” that would make the process more transparent for consumers – and more efficient for all parties involved, including the agency's staff. On the intake side, NAB agrees that the Consumer & Governmental Affairs Bureau (CGB) should take a “fresh look” at its approach to handling consumer complaints and how it uses complaint data (**Recs. 2.14, 2.15, 2.16, 2.17 and 2.19**). Replacing the current online intake interface with a single, streamlined web-based form would be helpful, but providing additional consumer education and improved customer assistance at the point of intake is even more critical. Together these measures should reduce the number of inactionable or incomplete complaints, while also greatly improving the quality and integrity of the complaint data. With better data available, the FCC could more easily identify patterns or trends in the marketplace. Aggregated data also could better inform the agency's substantive rulemaking and enforcement efforts.

On the closeout side, the Commission should improve that process by informing subjects of complaints when the agency has terminated an investigation without sanction (**Rec. 5.3**). As NAB has stated in other proceedings, current enforcement practices must be revised and brought

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<sup>5</sup> These logs/documents, whether they ultimately reside in the Electronic Reading Room, on the FOIA web page, or elsewhere on the Commission's website, should be organized and maintained in an intuitive, user-friendly and searchable format. NAB notes that some federal agencies are using FOIAonline, an online tracking tool. While NAB has never used FOIAonline, the Commission may want to explore the feasibility of utilizing such platforms. See <https://foiaonline.regulations.gov/foia/action/public/home>.

into compliance with constitutional, Administrative Procedure Act, and Communications Act requirements. Among other things, NAB has urged the FCC to increase transparency by notifying broadcasters of both the filing and dismissal of complaints.<sup>6</sup> Notifying licensees when a complaint has been closed without action is an important first step in the right direction. The agency should recognize that adopting this practice – and making it a routine expectation over time – can serve to protect the integrity of the FCC’s enforcement efforts from arbitrary and inappropriate abuses as Commission decision-makers change over time.

### III. IMPROVING FCC EFFICIENCY

It is to the Commission’s credit that the agency recognizes the need for it to become more operationally efficient. Tighter budgets require the Commission to be more forward-looking; approaches that may have worked historically should be revisited and assessed.

To be specific, NAB agrees that licensing processes and other adjudications should be streamlined and automated whenever possible (**Recs. 1.18 and 2.9**). Paper-based licensing processes in particular should be eliminated and replaced with electronic filings, as should requests for closed captioning exemptions (**Recs. 2.8 and 5.1**).<sup>7</sup> The Commission should maximize use of administrative vehicles to resolve pending matters (omnibus orders, summary dispositions, disposals on procedural grounds, disposals by public notice, etc.) and identify actions that could be further automated via the Media Bureau’s Consolidated Database System (CDBS). Such steps should result in quicker resolution of cases, including those that are currently backlogged (**Rec. 1.25**), and also help the agency expedite its handling of appeals of Media Bureau licensing matters (**Rec. 5.15**).

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<sup>6</sup> See, e.g., NAB Comments, GN Docket 13-86 (filed Jun. 19, 2013); NAB Reply Comments, GN Docket 13-86 (filed Aug. 2, 2013).

<sup>7</sup> NAB would further support a “deemed granted” approach to closed captioning exemption requests. See, e.g., **Rec. 1.22** (discussing generally whether the Commission should adopt a “deemed granted” or “deemed denied” approach to applications for review that have been pending for more than 90 days after the record closes).

Establishing clear deadlines for certain agency actions would bolster FCC efficiency efforts if the Commission makes a concerted and sustained effort to adhere to them.<sup>8</sup> Adoption of internal deadlines for many matters under the Commission’s control, such as the release of all FCC items within 30 days of adoption, should require little debate (**Rec. 1.1**).<sup>9</sup> For more complex matters such as media rulemakings, it might prove useful to set target dates for decision-making (**Rec. 5.13**), but deadlines alone cannot substitute for leadership determination to actually make substantive decisions. Similarly, announcing timelines for Executive Branch review of foreign ownership issues raised in applications (**Rec. 1.15**) may have some beneficial impact on those agencies, but the Commission should be clear about the limits of its power here – and it would be useful to couple any such announcement with information about what the Commission can do to assist other agencies in their review.<sup>10</sup>

NAB further agrees with the proposal for the Commission to review its regulations periodically and update or eliminate outdated rules (**Rec. 3.15**), including media-specific rules and related forms (**Rec. 5.31**). In particular, NAB supports the *Report’s* proposal to initiate a rulemaking to update FCC Form 325 so that it will “captur[e] data more reflective of the current MVPD marketplace and technologies.” As NAB has observed in certain other contexts, the Commission sometimes lacks basic information about MVPD capacity and other data relevant to its decision-making and its ability to monitor compliance with its own rules.<sup>11</sup> This information

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<sup>8</sup> Conversely, the Commission would harm its credibility if it established self-imposed deadlines, shot clocks, etc., that it routinely disregarded.

<sup>9</sup> NAB supports the adoption of the additional time frames outlined in Rec. 1.1 but notes that many of them are largely internal to the Commission.

<sup>10</sup> These steps might include FCC instructions to applicants on the level of detailed information the Executive Branch agencies may need to complete their assessments.

<sup>11</sup> See, e.g., Petition for Reconsideration of NAB and the Association for Maximum Service Television, Inc., Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120 (filed Nov. 17, 2008) (urging FCC to adopt a notice requirement for cable operators that believe they qualify for an exemption to the material degradation

is often uniquely within the control of MVPDs and cannot be readily obtained from outside sources. Updating the FCC Form 325 to gather more information from a broader swath of MVPDs<sup>12</sup> would be helpful to a variety of Commission analyses, and NAB supports such an effort. Additionally, NAB agrees that updating the Commission's rules to permit electronic delivery of retransmission consent and must carry election letters, with proof of receipt, would be appropriate at this time. NAB anticipates that electronic retransmission consent and must carry elections will be more efficient for both broadcasters and MVPDs. In implementing this approach, it will be important to ensure that broadcasters have access to accurate information for purposes of electronically communicating with MVPDs.<sup>13</sup>

Undertaking similar effort with respect to updating and/or eliminating categories of information collected pursuant to the Paperwork Reduction Act (PRA) may help the public as well, but the real beneficiaries likely will be the FCC staff who can be more productively employed on other tasks (**Rec. 2.28**).<sup>14</sup> Few of these "update" recommendations are novel; to the contrary, previous administrations have made similar promises at reform. The Commission could break new ground, however, if it follows through to actually finish the work this time.

In a similar vein, the FCC should update existing Media Bureau databases and forms (**Rec. 5.14**). CDBS is aging, as the agency itself has repeatedly acknowledged. The Commission should either substantially overhaul CDBS or convert to another database altogether. All of the proposals set forth in **Rec. 5.14** have merit, but the agency must at a

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standard because "[u]p-to-date information on the subscribership, technical capacity, and ownership structure of individual cable systems is not readily available via the Commission's website or public files.").

<sup>12</sup> See 47 C.F.R. § 76.403 (FCC Form 325 is only required to be completed by systems serving at least 20,000 subscribers; smaller systems are generally exempt).

<sup>13</sup> See NAB Comments in MB Docket No. 10-71 (May 27, 2011) at 15-17 (because of the lack of transparent public data about the location, geographic coverage area and contact information for MVPDs, broadcasters often face significant challenges when attempting to compile this data and trying to make timely carriage elections).

<sup>14</sup> NAB also agrees that parties should be required to file PRA comments electronically in ECFS.

minimum revise Form 323, and we urge the Commission to do so as soon as possible. Reporting broadcast ownership structures using this form is extraordinarily time-consuming, confusing and burdensome. The Commission should streamline the process to incorporate fairly basic functionality that will allow licensees to cross-reference to other forms with related information. A simplified process is likely to yield more accurate and usable ownership data.

Finally, completing open rulemakings on a timely basis plainly will improve the FCC's efficiency and regulatory effectiveness. In this regard, the Commission could usefully begin by acting on the *Report's* recommendation to update and clarify its antenna structure regulations (**Rec. 5.32**). It has been nearly four years since reply comments were filed in WT Docket 10-88. As the record in that docket reflects, many of the proposals have attracted broad support. Others, however, are problematic. Efforts to boost agency efficiency do not require the adoption of obligations that would impose substantial (and quantified) monetary and other burdens on structure owners, such as requiring tower owners to retroactively update or reevaluate their facilities, for no commensurate public service benefits. Accordingly, the Commission should move quickly to conclude that proceeding by adopting proposals that would minimize regulatory compliance burdens for antenna structure owners, while rejecting proposals that would reduce flexibility, impose new burdens, or harm air safety.<sup>15</sup>

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<sup>15</sup> See Comments of NAB, WT Docket No. 10-88 (filed Jul. 20, 2010); Reply Comments of NAB, WT Docket No. 10-88 (filed Aug. 19, 2010).

## CONCLUSION

The Commission can be commended on its efforts to generally streamline its operations, make its workings more transparent to the public, and deliver results more efficiently. NAB urges the FCC to move forward expeditiously on the recommendations discussed above, which will be of particular benefit to outside stakeholders and the general public.

Respectfully submitted,

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