

Regulation and the Federal Communications Commission

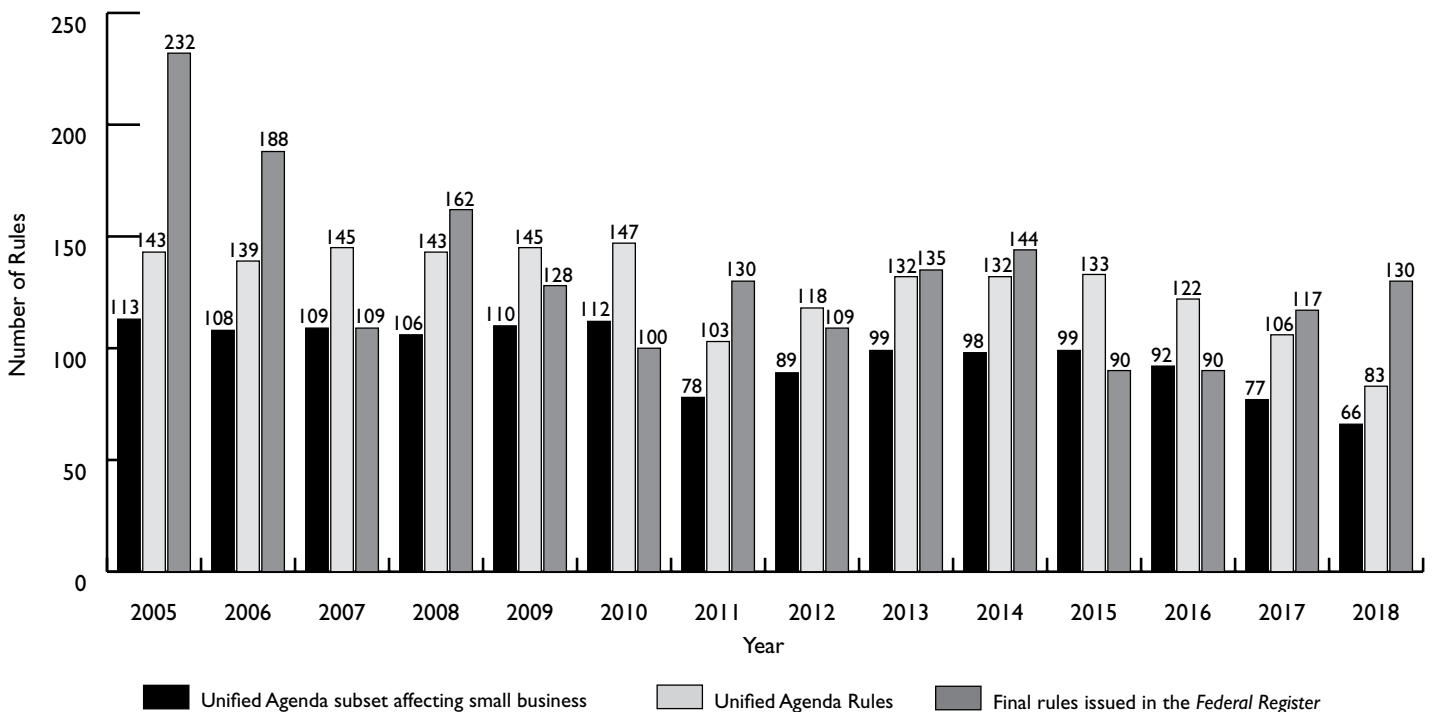
The Federal Communications Commission is by no means the heavyweight among regulators as gauged by the number of rules issued each year. Yet the FCC exerts great influence over a major engine in today's economy: telecommunications, the Internet, and the information economy generally. An agency's rule count is not all that matters because a handful of rules can sometimes have an outsized impact.

The FCC is an expensive agency. It spent an estimated \$469 million on regulatory development and enforcement during FY 2018³⁰¹

and likely accounts for more than \$100 billion in annual regulatory and economic impact.³⁰² Figure 23 shows the FCC's final rules in the *Federal Register* during the past decade, its overall number of rules in the fall Unified Agenda, and its Agenda rules affecting small business. Its 83 rules in 2018 in the Unified Agenda pipeline are matched or surpassed by 12 other departments or agencies (see Table 5) and its count of three economically significant rules is also exceeded or equaled by that of 13 other agencies (see Table 7). Of the 3,534 total rules in the fall 2018 Agenda pipeline, 83, or 2 percent, were in the works

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Figure 23. Number of FCC Rules in the Unified Agenda and *Federal Register*, 2005–2018



Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," *Federal Register*, various years' editions; from online edition at www.reginfo.gov; and from FederalRegister.gov.

at the FCC (Figure 23). Sixty-one of the FCC's rules in the fall 2018 pipeline, or 73 percent of its total, affect small business, as Figure 23 and Table 9 show.

In 2018, the FCC finalized 130 rules in the *Federal Register*, up from 110 in 2017. FCC final rules in the *Federal Register* numbered as high as 313 back in 2002, then declined steadily during the decade to lows of 109 in 2012, and then to 90 in both 2015 and 2016 (see Figure 23). As of February 12, 2019, the FCC had finalized six rules in the *Federal Register*.

A pro-regulatory mindset dominated the commission during the Obama administration, notably in the push to apply utility regulation to broadband in alleged pursuit of net neutrality. The overturning of that ruling by the FCC under Chairman Ajit Pai is under court challenge, and the case is likely headed to the Supreme Court.³⁰³ This illustrates the importance of distinguishing regulatory rules from deregulatory ones.

Of the 174 economically significant rules in the works across the entire federal govern-

ment, three belong to the FCC (see Table 7) and are listed below. Such rulemakings—along with other FCC rules in the Agenda pipeline and the dozens made final each year—present opportunities for either liberalization of telecommunications or greater central regulatory oversight and protracted legal battles.³⁰⁴ The FCC had chosen the latter in recent years, but has changed under Chairman Pai.

Three Economically Significant Rules in the Pipeline at the FCC

- Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; GN Docket No. 12-268, RIN 3060-AJ82
- Implementation of Section 224 of the Act; A National Broadband Plan for our Future (WC Docket No. 07-245, GN Docket No. 09-51), RIN 3060-AJ64
- Restoring Internet Freedom; WC Docket No. 17-108; Protecting and Promoting the Open Internet; GN Docket No. 14-28, RIN 3060-AK21