

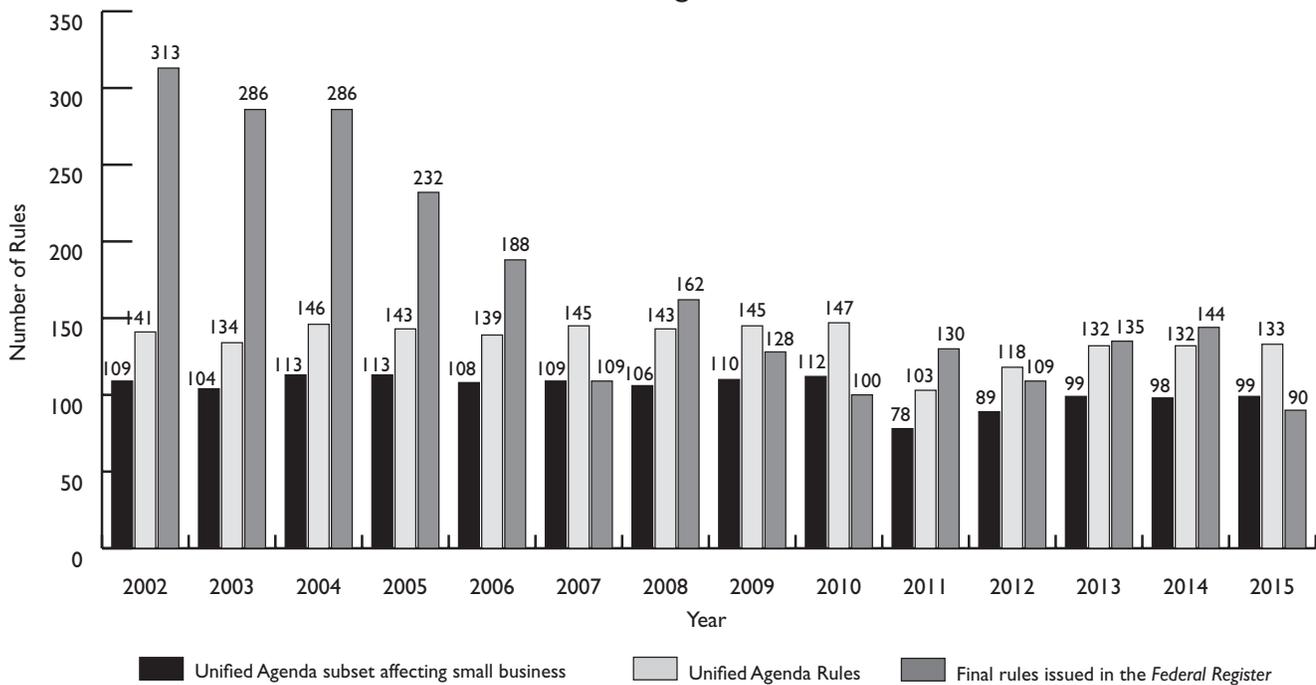
Regulation and the Federal Communications Commission

The Federal Communications Commission (FCC) is by no means the heavyweight among regulators as gauged by the number of rules issued. Its tally of 133 rules in the Unified Agenda pipeline is surpassed by seven other departments or agencies (see Table 5), and its count of eight economically significant rules is exceeded by those of seven other agencies (see Table 7). Yet the FCC merits singling out for review because it wields great influence over a major economic sector regarded as a growth engine in today's economy: telecommunications,

the Internet, and the information economy generally.

The FCC is an expensive agency. It spent an estimated \$464 million on regulatory development and enforcement during FY 2015⁹⁶ and likely accounts for more than \$100 billion in annual regulatory and economic impact.⁹⁷ Figure 24 shows the numbers of FCC's final rules in the *Federal Register* during the past decade, its overall rules in the fall Unified Agenda, and its Agenda rules with small-business impacts.

Figure 24. Number of FCC Rules in the Unified Agenda and *Federal Register*, 2002–2015



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.

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According to the National Archives' online database, FCC final rules in the *Federal Register* numbered as high as 313 back in 2002 and then declined steadily during the decade to lows of 109 in 2012 and 90 in 2015 (see third bars in Figure 24). There had been a bump upward of 32 percent between 2012 and 2014 (from 109 to 144).⁹⁸ As of April 26, 2016, the FCC had finalized 32 rules in the *Federal Register*.

Of the 3,297 total rules in the 2015 fall Agenda pipeline, 133, or 4 percent, were in the works at the FCC (Figure 24). The commission's Agenda presence remained rather flat during the decade before dropping rapidly to a low of 103 rules in 2011, but it has been rising since. Ninety-nine of the FCC's rules in the fall 2015 pipeline, or 74 percent of its total, affect small business, as Figure 24 and Table 8 show.

Although the FCC has published fewer rules in the Agenda and has finalized fewer than in preceding years, a pro-regulatory mindset prevails at the commission, most recently seen in the February 2015 push to apply utility regulation to broadband in alleged pursuit of so-called net neutrality, now being litigated.⁹⁹ Once again, an agency's rule count is not all that matters, because a handful of rules can have an outsized impact. Today's vibrant and robust communications markets are not fragile contrivances requiring fine-tuning by government bodies.¹⁰⁰ Communications markets do not exhibit abuses and market failures calling for top-down

rulemaking with respect to each and every new technological advance. Yet the FCC forges ahead to expand its domain in disregard of the outdated character of its original mandate to police public airwaves characterized by scarcity. Such conditions no longer apply today, when everyone is a potential broadcaster.

The FCC has continued the net neutrality push despite having already been rebuffed in federal court following earlier attempts and despite the concerns of many in Congress, which never delegated authority to the commission.¹⁰¹ Although a January 2014 federal court decision¹⁰² struck down part of the FCC's open Internet order,¹⁰³ it exposed the Internet to even wider FCC regulation—and the commission has responded accordingly.¹⁰⁴ In recent years, the FCC has also inserted itself into other matters, including multicast must-carry regulation, media ownership restrictions, video game violence portrayal, and wireless net neutrality.¹⁰⁵

As noted, of the 218 economically significant rules in the works across the entire federal government, eight belong to the FCC (see Table 7) and are presented in Box 3. Such rulemakings, along with other FCC rules in the Agenda pipeline and the hundreds made final each year, present opportunities for either liberalization of telecommunications or avenues for new central regulatory oversight and protracted legal battles.¹⁰⁶ The commission has chosen the latter.

Box 3. Seven Economically Significant Rules in the Pipeline at the FCC

- **Broadband over Power Line (BPL) Systems; ET Docket No. 04-37, RIN 3060-AI24:** “To promote the development of BPL systems by removing regulatory uncertainties for BPL operators and equipment manufacturers while ensuring that licensed radio services are protected from harmful interference.”
- **Expanding Broadband and Innovation through Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0–14.5 GHz Band; GN Docket No. 13-114, RIN 3060-AK02.**
- **Service Rules for the 698-746, 747-762, and 777-792 MHz Band Ranges; RIN 3060-AJ35:** “[O]ne of several docketed proceedings involved in the establishment of rules governing wireless licenses in the 698-806 MHz Band (the 700 MHz Band). This spectrum is being vacated by television broadcasters in TV Channels 52-69. It is being made available for wireless services, including public safety and commercial services, as a result of the digital television (DTV) transition. This docket has to do with service rules for the commercial services and is known as the 700 MHz Commercial Services proceeding.”¹⁰⁷
- **Universal Service Reform Mobility Fund; WT Docket No. 10-208, RIN 3060-AJ58.**
- **Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; Docket No. 12-268, 3060-AJ82.**
- **Internet Protocol-Enabled Services; RIN 3060-AI48:** “The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services composing each category constitute ‘telecommunications services’ or ‘information services’ under the definitions set forth in the Act. Finally, noting the Commission’s statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.”
- **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.**
- **Protecting and Promoting the Open Internet; WC Docket No. 14-28, 3060-AK21.**