

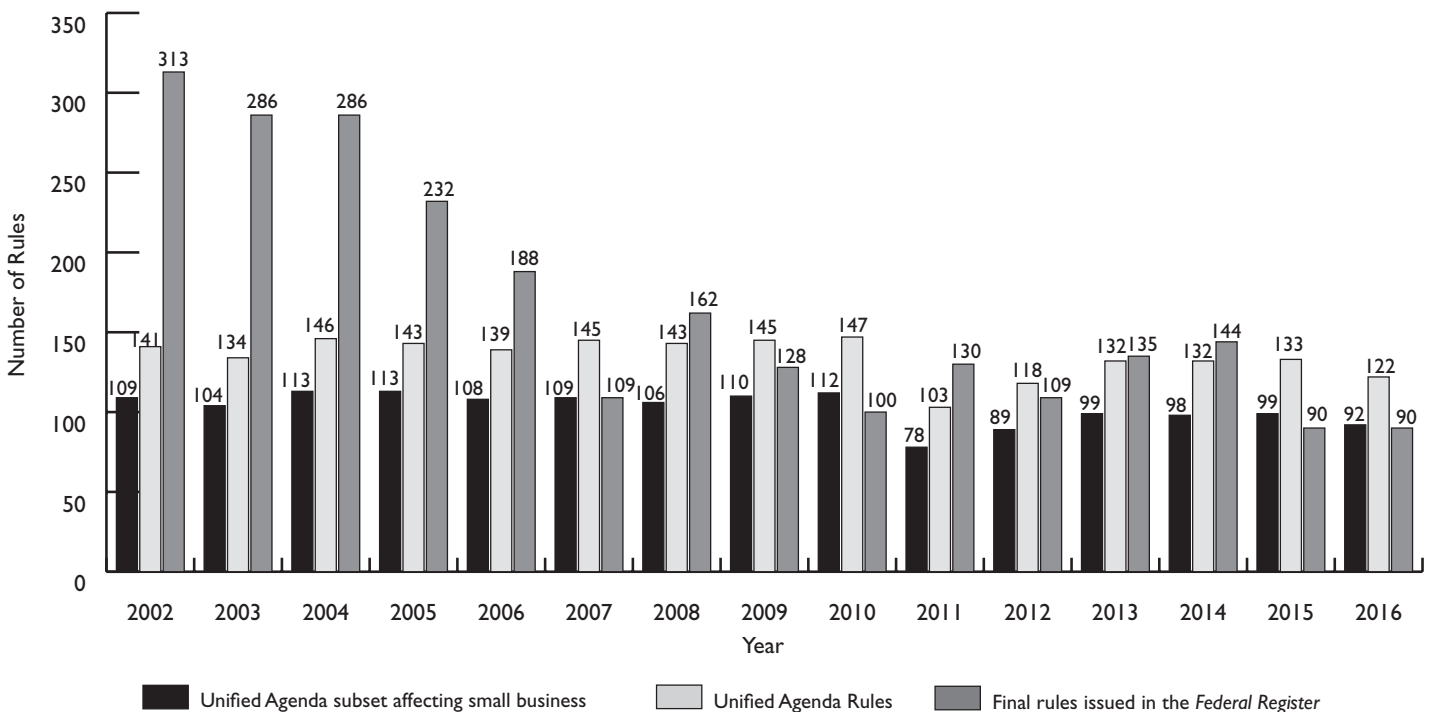
# Regulation and the Federal Communications Commission

The Federal Communications Commission (FCC) is by no means the heavyweight among regulators as gauged by the number of rules issued. Its 122 rules in 2016, down from 133 in 2015, in the Unified Agenda pipeline are surpassed by eight other departments or agencies (see Table 5), and its count of six economically significant rules is also exceeded by those of eight other agencies (see Table 7). Yet the FCC merits highlighting given its 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 will spend an estimated \$498 million on regulatory development and enforcement during FY 2017<sup>114</sup> and likely accounts for more than \$100 billion in annual regulatory and economic impact.<sup>115</sup> 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.

FCC final rules in the *Federal Register* numbered as high as 313 back in 2002, then declined steadily during the decade to lows of

Figure 23. Number of FCC Rules in the Unified Agenda and *Federal Register*, 2002–2016



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](http://www.reginfo.gov); and from *FederalRegister.gov*.

100 in 2010, 109 in 2012, and 90 in both 2015 and 2016 (see far-right bars in Figure 23). A bump upward of 32 percent occurred between 2012 and 2014 (from 109 to 144).<sup>116</sup> As of January 24, 2017, the FCC had finalized just three rules in the *Federal Register*.

Of the 3,318 total rules in the fall 2016 Agenda pipeline, 122, or 4 percent, were in the works at the FCC (Figure 23). The commission's Agenda presence remained rather flat during the decade before dropping rapidly to a low of 103 rules in 2011. Ninety-two of the FCC's rules in the fall 2016 pipeline, or 75 percent of its total, affect small business, as Figure 23 and Table 8 show.

Although the FCC has published fewer rules in the Unified Agenda and has finalized fewer than in preceding years, a pro-regulatory mindset dominated the commission during the Obama administration, most notably in the push to apply utility regulation to broadband in a pursuit of so-called net neutrality, now being litigated (and likely subject to a new rulemaking proceeding to overturn by new FCC Chairman Ajit Pai).<sup>117</sup>

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.<sup>118</sup> Communications markets do not exhibit abuses and market failures calling for top-down rulemaking with respect to each and every new technological advance. Furthermore, unlike the past, today's media landscape is not characterized by scarcity. In today's world, everyone is a potential broadcaster.

In recent years, the FCC has also inserted itself into matters that include multicast must-carry regulation, cable à la carte requirements, media ownership restrictions, indecency, video game violence portrayal, and wireless net neutrality.<sup>119</sup>

As noted, of the 193 economically significant rules in the works across the entire federal government, six belong to the FCC (see Table 7 and Box 3). 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 avenues for new central regulatory oversight and protracted legal battles.<sup>120</sup> The commission has chosen the latter in recent years, but may be poised for a change.

---

*Today's vibrant and robust communications markets are not fragile contrivances requiring fine-tuning by government bodies.*

---

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

- **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.**
- **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.**