

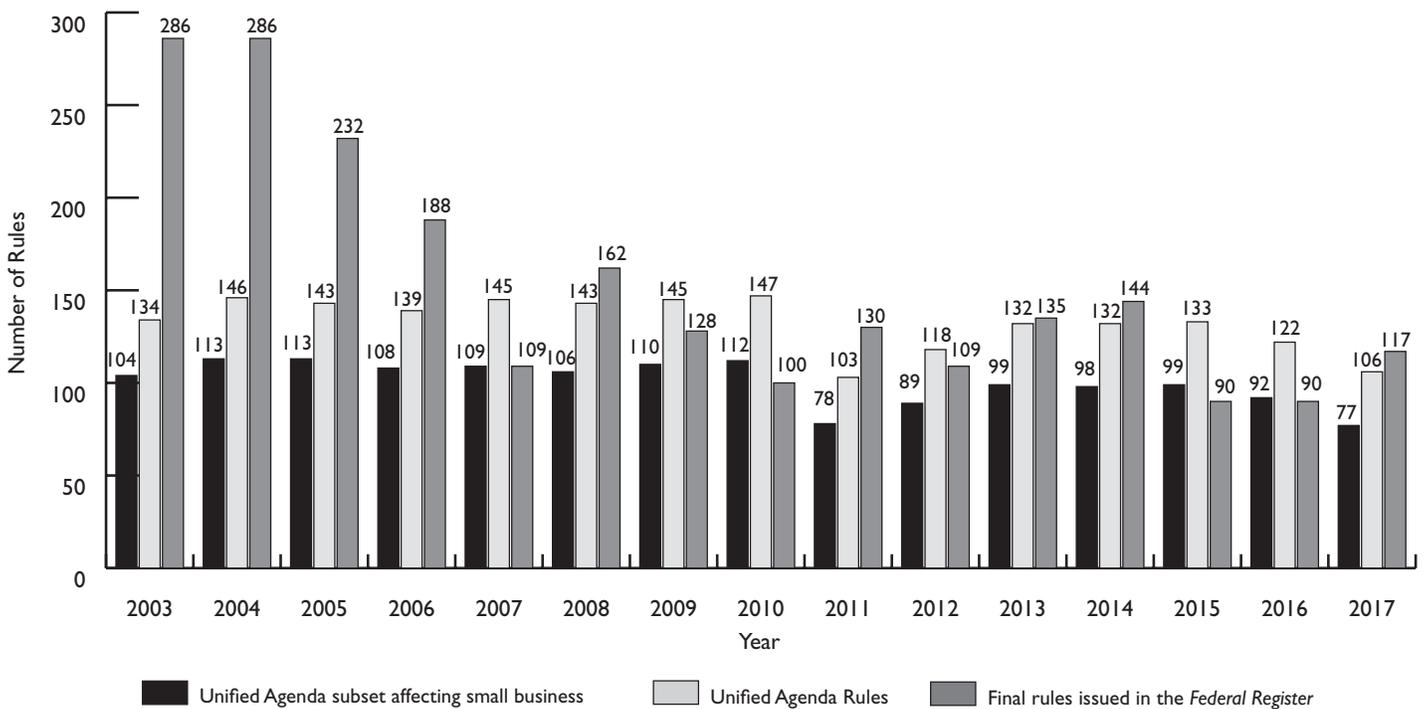
Regulation and the Federal Communications Commission

The Federal Communications Commission is by no means the heavyweight among regulators as gauged by the number of rules issued. 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. An agency's rule count is not all that matters because a handful of rules can have an outsized impact.

The FCC is an expensive agency. It spent \$459 million on regulatory development and

enforcement during FY 2016¹⁷⁵ and likely accounts for more than \$100 billion in annual regulatory and economic impact.¹⁷⁶ Figure 23 shows the FCC's final rules in the *Federal Register* during the past decade, its overall number of rules in the fall Agenda, and its Agenda rules affecting small business. Its 106 rules in 2017 in the Agenda pipeline are surpassed by nine other departments or agencies (see Table 5) and its count of five economically significant rules is also exceeded or equaled by that of nine other agencies (see Table 7). Of the 3,208 total rules in the fall 2017 Agenda pipeline, 106, or 3 percent, were in the works

Figure 23. Number of FCC Rules in the Unified Agenda and *Federal Register*, 2003–2017



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.

Box 4. 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
- Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions; GN Docket No. 12–268, RIN 3060-AJ82
- Internet Protocol-Enabled Services; WC Docket No. 04–36, 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
- Restoring Internet Freedom; WC Docket No. 17–108; Protecting and Promoting the Open Internet; GN Docket No. 14–28, RIN 3060-AK21

at the FCC (Figure 23). Seventy-seven of the FCC’s rules in the fall 2017 pipeline, or 73 percent of its total, affect small business, as Figure 23 and Table 8 show.

The FCC finalized 117 rules in the *Federal Register* in 2017, up from 90 in 2016. 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 far-right bars in Figure 23). As of February 21, 2018, the FCC had finalized 19 rules in the *Federal Register*.

A pro-regulatory mindset dominated the commission during the Obama administration, most notably in the push to apply utility regulation to broadband in pursuit of

so-called net neutrality rules. Those rules are now subject to a new rulemaking to overturn spearheaded by new FCC Chairman Ajit Pai.¹⁷⁷ This again illustrates the importance of distinguishing regulatory rules from de-regulatory ones.

Of the 140 economically significant rules in the works across the entire federal government, five belong to the FCC (see Table 7 and Box 4). 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.¹⁷⁸ The commission had chosen the latter in recent years, but has changed under Chairman Pai.