

Communications Daily

Senate Critiques of Agency Public Commenting Woes May Spur Change

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The Senate Investigations Subcommittee gave guidance to federal regulatory agencies on how much they should consider the volume of comments on a proposed rule and said the agencies should develop limits on duplicative comments, in recommendations Thursday. The FCC was flagged in the report. Government transparency advocates said some agencies are considered likely to act on the recommendations.

Many federal agencies, including the FCC, don't have good processes to address allegations of comments under fraudulent identities and are often aware but take little action, said the report. It said the FCC process of advising people who had comments submitted under their names to submit their own comments just makes the docket longer and makes comments that much less useful. That agencies don't use CAPTCHA or some other technology to ensure people instead of bots submit comments leaves the commenting process particularly vulnerable to abuse, it said.

Putting agency commenting systems online and creating Regulations.gov helped modernize the process, but since then, "to be frank, we got complacent," said Subcommittee Chairman Rob Portman, R-Ohio. "What's worse, right now there's no game plan in Congress or in the agencies for how we can correct this moving forward." He said the report "should be a wakeup call to all of us, in the agencies and here in Congress. It shows just how broken these commenting systems have become."

"The FCC is in the middle of a comprehensive overhaul our online comment system," a spokesperson emailed. "We want to keep it easy for the American public to participate in our proceedings and prevent abuse of the system, and sometimes there can be understandable tension between these two objectives. We will shortly begin a series of roundtable discussions with stakeholders regarding this overhaul and look forward to hearing and discussing ideas for how to address problems that have been identified. With respect to the hearing, we look forward to considering the subcommittee's recommendations."

FCC Deputy General Counsel Ashley Boizelle told the subcommittee the agency is looking at possibly implementing CAPTCHA, tools to authenticate identities, creating docket home pages featuring comment deadlines and links to major filings, and eliminating the electronic comment

filing system's open application programming interface to limit bot activity in agency proceedings. That's from a transcript of prepared remarks at a hearing also Thursday.

Recommendations include E-Government Act amendments to clarify government shouldn't accept or post abusive, threatening or irrelevant comments or those submitted under a fake identity, and executive branch and independent agencies should develop protocols for reviewing and posting comments. It recommended agencies including the FCC develop uniform limits on duplicative comments and technological means to reduce their number. It said agencies should require commenters submit individual comments directly and develop policies encouraging organizations to collect signatures on one comment instead of submitting legions of individual identical ones. Other proposals include use of technology like CAPTCHA, allowing commenters the option to submit anonymously but not under a false name, and agencies referring allegations of identity theft to law enforcement.

Given how simple the recommendations are, "I can't believe it's taken this long," Lisa Rosenberg, executive director of Open the Government, told us. Implementation would likely make a difference in strengthening the notice-and-comment system, she said. She said for the plans that could be done at the agency level, some agencies will surely implement such fixes as soon as possible, though others might balk, complaining of the lack of resources for implementation or just because they "are stuck in their old ways." The FCC "ought to look closely at these," she said. It's less clear whether the recommendations that require congressional action will get attention, though they could find champions to help push them along, she said.

Amit Narang, Public Citizen regulatory policy advocate, worried some recommendations such as limits on comment volume or funneling mass comments into one could have a chilling effect on grassroots campaigns. "The last thing we want to do is essentially restrict public participation in the rulemaking process to voices already loudest and most influential [such as] inside the Beltway groups," he said.

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