Rule Making, Petition for, Denied
Rule Making, Review of

Petition for rule making seeking to require the Commission to act on all petitions for rule making within 180 days denied. Petitioner's time frame is a desirable goal but the complexity of issues, number of comments, limited resources, etc. are reasons why this goal cannot always be achieved.

FCC 80–507

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Petition for the Adoption of Procedures to Limit the Time in which the Commission Must Respond to a Petition for Rulemaking	RM-3539

MEMORANDUM OPINION AND ORDER

(Adopted: September 10, 1980; Released: September 30, 1980)

BY THE COMMISSION: COMMISSIONERS BROWN AND JONES DISSENTING AND ISSUING A JOINT STATEMENT.

1. The Commission has before it a Petition for Rulemaking filed by the National Citizens Committee for Broadcasting (NCCB) on December 17, 1979. NCCB's petition proposes that the Commission amend §1.407 of our rules to require the agency to act on a rulemaking petition within 180 days of its receipt. Public Notice was given on January 4, 1980. Comments were filed by only two parties, National Public Radio (NPR) and the National Radio Broadcasters Association (NRBA).

2. NCCB asserts that there is often an inordinate delay before the Commission acts upon rulemaking petitions. In support of this claim, petitioner cites congressional and other studies noting the excessive delay associated with federal regulatory proceedings, including those of this agency. In NCCB's view, such delay creates an impression of Commission indifference to rulemaking petitions which deters public involvement in the regulatory process. NCCB asserts that promulgation of the proposed rule will dispel that impression by ensuring that all petitions are quickly considered and acted upon. Moreover, petitioner states, a fixed deadline for responding to rulemaking petitions will improve this agency's internal efficiency.

3. NCCB notes that the Broadcast Bureau already has an informal policy of acting upon petitions for rulemaking within six months; thus,

NCCB states, adoption of the proposed rule would simply transform an existing policy into a legally binding regulation. As further evidence of the feasibility of its proposal, petitioner observes that certain agencies have adopted rules establishing deadlines for granting or denying rulemaking petitions.

4. Both commenters support the adoption of deadlines for action on rulemaking petitions. NPR urges us to promulgate the rule as proposed. It notes that NCCB's proposal would also eliminate substantial duplication of efforts by petitioners and improve management of communications resources. To illustrate the latter point, NPR describes a case in which four years elapsed before the Commission granted a rulemaking petition asking for coordination of noncommercial radio development. Had the agency promptly acted upon the petition, NPR maintains, many of the problems now being considered in the proceeding could have been avoided.

5. NRBA also agrees that adoption of time limits would be desirable. NRBA observes, however, that in some instances there may be legitimate reasons why a petition cannot be acted upon within 180 days. To allow for such cases, NRBA proposes that if, after 180 days, the FCC is unable to grant or deny a petition, it may instead notify the petitioner that action on the petition is being deferred and provide a clear statement of reasons for deferral. Such deferrals could be extended by further notice every 180 days. NRBA suggests that this alternative preserves the deadline provision but recognizes that in "exceptional cases" the Commission may need more than 180 days to act upon a petition.

6. We agree with NCCB and the commenting parties that prompt handling of Commission business, including the disposition of petitions for rulemaking, provides substantial benefits to both the public and the FCC. Toward this end, we have adopted various measures to expedite consideration of rulemaking petitions. For example, the Commission recently amended its rules to eliminate the notice and comment procedure for petitions that are moot, repetitive, premature, frivolous, patently without merit, or for some other reason do not warrant the Commission's consideration. *See In the Matter of Procedures Regarding Petitions for Rulemaking,* FCC 80–347, released June 19, 1980. As a result, petitions which satisfy the above criteria can be acted upon more quickly. In addition the time previously spent by the staff analyzing comments on such petitions can instead be devoted to other matters, including consideration of other pending meritorious rulemaking petitions. The Commission has also devised an internal procedure, the Quarterly Status Report, to enable Commission members and top management to monitor the status of outstanding rulemaking petitions. The Report is compiled every three months and includes for every pending petition, the date the petition was filed, a

target completion date, and a description of the amount of work completed each quarter.[1] This information allows the agency's managers to identify bottlenecks, require explanations of extended delays, and take corrective action as appropriate.

7. The Commission will continue to explore ways to expedite the handling of rulemaking petitions. We do not believe, however, that either rule proposed in this proceeding would be a useful modification. In many cases, rulemaking petitions can be and have been acted upon within 180 days of their receipt. Therefore, we hereby adopt that time frame as a goal to be achieved whenever possible. On the other hand, there are legitimate reasons why that goal may not always be met. For instance, the complexity of the issues raised, the number of comments received, the need to solicit the views of more than one Bureau or Office and to resolve resulting differences of opinion among the staff, are all factors that can enlarge the amount of time necessary to rule on a petition. In some instances, it may be more efficient to defer consideration of a proposal until a related rulemaking proceeding or Commission-initiated study is completed. Moreover, the resources the Commission can devote to petitions for rulemaking are not unlimited. To discharge its broad regulatory mandate most effectively, the agency must at times grant priority to those petitions raising matters of greatest public benefit. For all of these reasons, promulgation of NCCB's proposed rule would be undesirable.

8. Nor would adoption of NRBA's suggested modification be in the public interest. Under that proposal, the staff would be diverted from analyzing petitions to preparing reasons explaining delay, thereby compounding existing delay. Nevertheless, members of the public bho have taken the time to prepare and submit petitions for rulemaking have a legitimate interest in knowing the status of their petitions. The Quarterly Status Reports referred to above contain such information. They also list the name and telephone number of the person responsible for preparing a draft response to the petition. Therefore, we have determined to make these Reports available for public inspection. Copies of the most recent report will be available in each Field Office, in the Public Reference Room, the Library, as well as in the Office of Public Affairs.[2]

9. In view of the above, IT IS ORDERED, that the Petition for Rulemaking filed by the National Citizens Committee for Broadcasting IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO, *Secretary.*

[1] The Report contains similar information for pending notices of inquiry, notices of proposed rulemaking and internal staff studies.

[2] The "Comments" section of individual status reports and information concerning internal studies will be deleted from these public reference copies in order to safeguard the Commission's deliberative process.