

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Delete, Delete, Delete)	GN Docket No. 25-133
)	

Comments of TechFreedom

In response to the draft “Direct Final Rule” Order released July 3, 2025,¹ and to be voted on at the next open Commission meeting on July 24, 2025, we hereby file these comments.²

I. Introduction

The goal of modernizing and streamlining FCC rules is laudable, and we filed comments³ and reply comments⁴ in the “Delete, Delete, Delete” Docket supporting the concept. Exactly *how* the FCC goes about this process is important, however, and much can

¹ See Draft Direct Final Rule, FCC CIRC2507-04 (July 3, 2025), <https://docs.fcc.gov/public/attachments/DOC-412694A1.pdf> (“Draft Direct Final Rule Order”).

² This letter is filed prior to “sunshine” prohibition period pursuant to 47 C.F.R. § 1.1203(b).

³ TechFreedom, Comments on Delete, Delete, Delete at 29 (Apr. 11, 2025), <https://www.fcc.gov/ecfs/document/104111580520766/1> (“This is an important docket, and the best chance in a generation to realign FCC regulations with the best meaning of the Communications Act and congressional intent. But speed kills, and making hasty decisions without careful adherence to the APA, when required, will tie up the FCC’s actions for years, if not decades, in the courts. Most important, now is not the time for a Magellan-like ‘voyage of discovery’ to seek the outermost limits of the FCC’s ability to interpret its statutory authority. Those waters are dangerous after the legal tsunami of *Loper Bright*. The command from the bridge should be ‘proceed with caution,’ not ‘full steam ahead.’”).

⁴ TechFreedom, Reply Comments on Delete, Delete, Delete at 2 (Apr. 28, 2025), <https://www.fcc.gov/ecfs/document/1042868695709/1> (“Some FCC regulations are outdated, unnecessary, or downright harmful. We support efforts to modernize, streamline, or scrap such regulations.”).

be learned from how prior Commissions tackled the problem of right-sizing FCC rules.⁵ This is especially true given that any agency decision no longer enjoys *Chevron* deference after the *Loper Bright* decision.⁶

II. Deleting Outdated Regulations Via a Direct Final Rule is Unprecedented at the FCC

In one of its first major actions within the context of the Delete, Delete, Delete Docket, the Commission has proposed eliminating eighteen rules it concludes no longer serve the public interest because “they govern obsolete technology, outdated marketplace conditions, expired deadlines, or repealed legal obligations.”⁷ We do not disagree with the substance of the Draft Direct Final Rule Order; it is most likely true that each of these rules are legacies of bygone regulatory eras.

What concerns us, however, is the *process* the FCC is using to wipe out these provisions of the Code of Federal Register—a “direct final rule.” No such process exists under current FCC rules. While the Draft Direct Final Rule Order points to instances where the FCC has acted without taking further comment from the public,⁸ all of the cited actions were either taken as part of specific rulemaking proceedings on which the public had already had

⁵ See TechFreedom, Comments on Delete, Delete, Delete at 13-20 (discussion of how the Fowler and Pai Commissions approached deregulatory reform).

⁶ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

⁷ Draft Direct Final Rule Order, ¶ 4 (footnotes to specific rules omitted).

⁸ *Id.* n.8.

a chance to comment,⁹ in response to a court order vacating a regulation,¹⁰ or in response to new statutory language requiring specific implementation but not statutorily calling for a formal rulemaking.¹¹ In none of those instances did the FCC, on its own motion and without previously taken public comment, move to change existing rules.

Here, in contrast, the FCC has moved to a proposed “direct final rule” without engaging the public on the specific regulations to be deleted. To support this unprecedented procedural move, the Commission points to Recommendation 2024-6 from the Administrative Conference of the United States, Public Engagement in Agency Rulemaking Under the Good Cause Exemption.¹² The ACUS Recommendation points to other agencies

⁹ Promoting Telehealth in Rural America, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, 38 FCC Rcd 827, 855-56 (2023) (order came in a docket created more than five years before the order was issued which generated more than 500 comments); Modernization of Media Regulation Initiative Revisions To Cable Television Rate Regulations, et al., Further Notice of Proposed Rulemaking and Report and Order, 33 FCC Rcd 10549, 10569-70 ¶ 41 (2018) (order was issued in six consolidated dockets, the oldest of which dated back 24 years, providing ample opportunity for these issues to be discussed through notice and comment).

¹⁰ See 2014 Quadrennial Regulatory Review, et al., Order, 36 FCC Rcd 9354, 9355 ¶ 2 (MB 2021) (“The Bureau finds that notice and comment are unnecessary for these rule amendments under 5 U.S.C. § 553(b) because this ministerial order merely implements the decision of the U.S. Supreme Court.”). Indeed, since the release of the Draft Direct Final Rule Order, the FCC has issued two more orders deleting rules in accordance with court vacatur orders. See Delete, Delete, Delete, Order DA 25-613 (July 11, 2025) (conforming Parts 8 and 20 of the FCC’s rules to the vacatur order in *Ohio Telecom Ass’n v. FCC*, 124 F.4th 993 (6th Cir. 2025)); Delete, Delete, Delete, Order DA 25-621 (July 14, 2025) (conforming Part 64 to the vacatur order in *Insurance Marketing Coalition Limited v. FCC*, 127 F.4th 303 (11th Cir. 2025)).

¹¹ See Amendment of Section 1.80 of the Commission’s Rules Implementing Section 2 of the Preventing Illegal Radio Abuse Through Enforcement Act (Pirate Act), Order, 35 FCC Rcd 14591, 14591 ¶ 1 (EB, OMD 2020) (“This Order amends section 1.80 of the Commission’s rules to implement th[e] provision[s] of the PIRATE Act]. We move directly to an order here because implementation of new section 511 entails no exercise of our administrative discretion and, therefore, notice and comment procedures are unnecessary under the ‘good cause’ exception to the Administrative Procedure Act (APA).” (footnote omitted)). Here, in contrast, wiping entire regulations off the books is the height of “administrative discretion.”

¹² 89 Fed. Reg. 106406 (2024) (“ACUS Recommendation”).

who have utilized the direct final rule process as a way to bypass the burdens of public comment for completely routine matters.¹³

The problem for the FCC is that it does not have any current mechanism for moving to a direct final rule. The FCC's rulemaking procedures have long been codified at 47 C.F.R. §§ 1.401-1.429. There are no rule provisions under which the Commission can issue a direct final rule, and we are unaware of any other instance in the 91-year history of the agency in which it has so acted.¹⁴

III. If the Commission Seeks to Begin Using Direct Final Rules, It Should Open a Docket to Formally Establish Such Procedures

If the Commission wishes to establish a new method by which it can eliminate existing regulations without undertaking a full rulemaking proceeding, it should open a docket specific to that subject and seek public comment. First and foremost, the Commission should seek comment on how long the public should have to comment on a direct final rule. For example, the Draft Direct Final Rule Order would require opposing comments to be filed within ten (10) days of publication within the Federal Register, an extremely tight window

¹³ ACUS Recommendation, *supra* note 12, at 106408 (“[N]otice-and-comment procedures can be time-consuming and resource-intensive, and there are circumstances in which the costs of those procedures may outweigh their benefits in terms of public participation.”).

¹⁴ Contrast this order with other agencies who either have established rules for moving to a direct final order, or clearly established precedent and definitions as to when such a procedure is appropriate. *See* 49 C.F.R. § 106.40 (Department of Transportation rule for issuing a direct final rule, 67 Fed. Reg 42948 (June 25, 2002)); *see also* United States Regulatory Commission, “Direct Final Rule,” <https://www.nrc.gov/about-nrc/regulatory/rulemaking/rulemaking-process/direct-final-rule.html> (indicating that it is “used for non-controversial regulatory amendments,” and includes ‘procedures,’ and ‘criteria’”).

for comment, and contrary to the “best practice” of the ACUS Recommendation, which lists thirty (30) days as the minimum public comment period.¹⁵

Second, and far more important, the Commission should seek comment as to *when* the direct final rule procedures should be invoked. Should that be limited to truly ministerial cases, such as cited in the Draft Direct Final Rule Order? Or should it become a new norm, as the “Fact Sheet” suggests: “The Direct Final Rule, if adopted, would advance the process of repealing rules identified as outdated and obsolete, and set the stage for further use of similar procedural tools for further deregulation in the future.”¹⁶ What is “routine,” “insignificant,” or “inconsequential” and who is to decide—the Commissioners or the Bureau chiefs?¹⁷ The Draft Direct Final Rule Order goes further still, indicating that the Commission “intend[s] to repeal certain rules that we have identified as outdated, obsolete, unlawful, anticompetitive, or otherwise no longer in the public interest.”¹⁸ Does the Commission

¹⁵ ACUS Recommendation, *supra* note 12, at 106409 (agency should provide “a period of at least 30 days during which interested persons may submit comments regarding the substance of the rule.”). The rule sections cited by the FCC in the Draft Direct Final Rule Order in defense of a ten-day comment period all involve pleading cycles in previously established inter-partes proceedings. *See* Draft Direct Final Rule Order n.11. It is one thing to expect parties already in litigation to be able to respond within ten days to a pleading. It is far different to expect interested parties to “lawyer up” and respond to a wholly new Federal Register Direct Final Rule in only ten days.

¹⁶ Draft Direct Final Rule Order, Fact Sheet.

¹⁷ Particularly, the Commission should seek comment on whether the Direct Final Rule procedures should be available to the Bureaus, as suggested in the Draft Direct Final Rule Order ¶ 10 (“In recognition of past actions on delegated authority to adopt some rules without notice and comment, we take this opportunity to make clear that all Bureaus and Offices may rely on direct final rule procedures to adopt changes to rules they administer where prior notice and comment are ‘unnecessary’ under the APA, consistent with relevant limitations on new or novel actions. This will enable the Commission to continue to leverage the efficiencies of delegated authority to modify our rules when ‘the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.’”).

¹⁸ *Id.* ¶ 2.

intend to invoke direct final rule procedures for rules it concludes are “unlawful, anticompetitive, or otherwise no longer in the public interest”?

IV. The FCC Should Seek Comment on Empowering the General Counsel to Delegate Direct Final Rule Authority to the Bureaus

Finally, the Commission should take public comment on whether the FCC Office of General Counsel should be tasked “to update the Commission’s Part 0 delegated authority rules to make clear this delegation of authority to all Bureaus and Offices with respect to the rules they administer.”¹⁹ While Part 0 might be viewed as “rules of agency ... procedure or practice” that do not require notice and comment under the APA,²⁰ this new rewrite would not be inward-facing—*i.e.*, only impact the internal workings of the FCC—but would also be outward facing: it would impact the ability of the public to comment on new or deleted rules.

The Commission should heed the advice of ACUS in 1992:

For rules falling within the “procedure or practice” exception in 5 U.S.C. 553(b)(A), agencies should use notice-and-comment procedures voluntarily except in situations in which the costs of such procedures will outweigh the benefits of having public input and information on the scope and impact of the rules, and of the enhanced public acceptance of the rules that would derive from public comment.²¹

The Draft Direct Final Rule Order fails to indicate why seeking comment on such a significant change to FCC procedures would outweigh the benefits. Taking comment is also

¹⁹ *Id.* ¶ 10.

²⁰ 5 U.S.C. § 553(b)(A).

²¹ Recommendation 92-1, The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements (June 18, 1992), <https://www.acus.gov/sites/default/files/documents/92-1.pdf>.

consistent with what prior Commissioners have argued for in the name of transparency and full public input before changing rules.²²

V. Conclusion

Only after receiving full public comment should the Commission decide whether to adopt rules which establish a framework under which it can escape the rigors of the APA, then codify them in a new set of rules (presumably beginning at 47 CFR § 1.431). Currently, it appears that, in order to avoid public comment on eighteen allegedly obsolete rules, the Commission is adopting completely new procedures, but without receiving any public comment on these procedures, and adopting procedures by which the General Counsel can rewrite portions of Part 0 without any public comment.

We do not dispute that certain rules need reform, and we do not dispute that the Commission might be better positioned to delete such rules outside the normal confines of APA notice-and-comment rulemaking in truly limited instances. But we do object to the double whammy of doing so while also establishing entirely new procedural rules without taking comment, the effect of which would be to deprive the public of the opportunity to comment in advance of specific rules being modified or eliminated. That should be

²² See, e.g., Targeting and Eliminating Unlawful Text Messages, CG Docket No. 21-402; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02 278; Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17-59, Second Report and Order, Second Further Notice of Proposed Rulemaking, and Waiver Order (Dec. 13, 2023) (dissenting statement of Com. Simington) (“However, as to our approach to 1-to-1 consent in the lead generation context, we are over our skis, and I dissent. I would have been pleased to support the approach, laid out in the NPRM, to constrain consumer consent to robotexting to only those entities ‘logically and topically related’ to the predicate of the consumer inquiry. . . Unfortunately, by adopting 1-to 1 consent on a factually thin record, we today clumsily rush to save the American consumer from herself by sticking our finger in yet another new pie, vigorously stirring, calling the resulting mess a cobbler, insisting that it’s healthier, and leaving the janitorial staff of brick-and-mortar, Main Street mortgage lenders, insurance brokers, real estate agents, and the like to clean up.”).

unthinkable for a Commission that successfully has regulated the communications industry for nearly 100 years.

Respectfully submitted,

_____/s/____

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