Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
In re: Delete, Delete, Delete	)	GN Docket No. 25-133
	)	
Direct Final Rule	)	

Adverse Comments of

National Consumer Law Center on behalf on its low-income clients
National Consumers League
Consumer Federation of America
Electronic Privacy Information Center
Public Justice
Public Knowledge

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Adverse Comments

I. Introduction and Summary

These **Adverse Comments**, written by the **National Consumer Law Center** (NCLC) on behalf of its low-income clients, and **Consumer Federation of America, Electronic Privacy Information Center**, **National Consumers League, Public Justice, and Public Knowledge**, are submitted in response to the **Direct Final Rule (DFR)** released by the Federal Communication Commission (Commission or FCC) on July 28, 2025,[1] and published in the Federal Register on August 4, 2025.[2] We support the Commission's efforts "aimed at eliminating outdated rules, reducing unnecessary regulatory burdens, accelerating infrastructure deployment, promoting network modernization, and spurring innovation."[3] However, with these Adverse Comments we urge the Commission to abandon the summary process set forth in this Direct Final Rule (DFR) for following reasons:

- **Rushing regulatory changes as proposed is likely illegal in many instances, counterproductive, and bad policy.**

As we explain in Section II, in the Direct Final Rule, the FCC proposes an expedited procedure that potentially enacts important changes without providing interested parties and the public with meaningful opportunities to object and explain relevant concerns. The Administrative Procedure Act (APA) does, on a showing of good cause, permit exemptions from full compliance with notice and comment rulemaking procedures, but the exemptions are limited, and their use must be justified. Under the DFR, the FCC will not accept late comments or provide any opportunity for

[1] FCC, Direct Final Rule, In re Delete, Delete, Delete, GN Docket No. 25-133 (adopted July 24, 2025; released July 28, 2025). (DFR) https://docs.fcc.gov/public/attachments/FCC-25-40A1.pdf

[2] Delete, Delete, Delete; Removal of Obsolete Regulations, 90 Fed. Reg. 39396(Aug. 4, 2025) https://www.federalregister.gov/documents/2025/08/04/2025-14704/delete-delete-delete-removal-of-obsolete-regulations

[3] DFR at 1.

reply comments. It will also automatically finalize rule changes without an explanation of the agency's evaluation of the comments. These departures from compliance with APA procedures present a real barrier to public participation in the regulatory process. The Commission has not explained the reasons for this new, hurried, procedure, and as a result it appears to be arbitrary. If the FCC uses the DFR procedure for changing or deleting important regulations, it will undermine transparency and weaken the FCC's regulatory authority.

- **The proposal to permit FCC bureaus and offices to issue regulatory changes using the DFR process is confusing and likely illegal.**

In Section III, we describe the additional legal and practical problems associated with the DFR's proposal to allow subsidiary sections of the FCC to issue regulatory changes. The issues are compounded by confusion over how affected parties can appeal the bureaus' decisions to the courts. The proposed process seems to deprive affected parties of a meaningful opportunity to challenge the changes in court. Delegating regulatory authority, as proposed, to subsidiary agency offices is bad policy, and will harm regulated entities as well as the public the FCC is required to protect.

II. The Administrative Procedure Act does not authorize the rushed procedure described in the DFR and the process will undermine the FCC's authority to issue appropriate regulations.

A. There is no explanation for how the proposed procedure meets the APA requirements.

The FCC proposes to use one of the three good cause exceptions allowed under the APA to avoid the normal process of soliciting, receiving and considering comments from the public before enacting a change to agency regulations.[4] As proposed by the DFR, once the proposed regulatory changes are announced in the Federal Register, the change or repeal of existing regulations will

[4] DFR at ¶¶ 6,7.

proceed at a breakneck pace. Comments must be filed within ten days. If the Commission does not consider the comments filed to be "significantly adverse", then 60 days later, the rule change will automatically take effect. Only if the comments are considered to be "significantly adverse" will this speedy conclusion be delayed and the proposed changes withdrawn or reconsidered.[5] If the Commission does not consider any adverse comments to be significant, it will adopt the regulatory change without issuing the standard description of its reasons for the regulatory change, nor will it explain why the adverse comments filed were not considered significantly adverse.

The interpretation and application of the APA should be guided by the Administrative Conference of United States (ACUS), which is the "federal agency in the executive branch charged with identifying and promoting improvements in the efficiency, adequacy, and fairness of the procedures by which federal agencies conduct regulatory programs, administer grants and benefits, protect the public interest, and perform other essential governmental functions."[6]

As the ACUS explains, the APA requires an agency involved in rulemaking to provide a notice and comment process, publish in the Federal Register an explanation of the nature of the proceedings, the legal authority for the rule, and the terms or substance of the proposed rule, as set out the terms for interested parties to provide comments.[7] Importantly, "[a]fter taking public comments into account, the agency must publish the text of a final rule and include 'a concise general statement of [its] basis and purpose.'"[8]

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[5] DFR at ¶ 5.

[6] Administrative Conference of the United States, *About ACUS*, https://www.acus.gov/about-acus (last visited Aug. 12, 2025).

[7] Administrative Conference of the United States, *Best Practices for Agency Use of the Good Cause Exemption for Rulemaking*, at pg. 6. Available at: https://www.acus.gov/projects/public-engagement-agency-rulemaking-under-good-cause-exemption (last visited Aug. 12, 2025).

[8] *Id.* at 7.

In late 2024, the ACUS published a description of how the APA's good cause exemption, which allows an expedited process for regulatory changes, should be implemented.[9] The APA sets forth three good causes that will justify the accelerated process: when notice and comment are "impracticable," "unnecessary," or "contrary to the public interest."[10] The good cause exemption should be "narrowly construed and reluctantly countenanced."[11]

The ACUS explains that 'impracticable' is "when an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required."[12] The example provided involves a safety rule that the agency believed was important to mandate immediately. Nothing the FCC has said in the DFR proposal suggests that this applies to the DFR process proposed by the FCC.

ACUS describes the "unnecessary" arm of the exemption as applying to "the issuance of a minor rule in which the public is not particularly interested."[13] Indeed, at least some of the proposed deletion of the regulations that are identified in footnotes 5, 6, 7 and 8 of this DFR, may rightly fit within this category.[14] However, our concern is that the Commission's proposal for the DFR process will not be confined to repeal of minor outdated rules or to rulemakings undertaken by the Commission itself, but would impermissibly expand the use of the good cause exemption.

The third exemption is when supplying notice and the opportunity to comment would be "contrary to the public interest." ACUS describes this as one which "connotes a situation in which

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[9] *Id.* at 12.

[10] 5 U.S.C. § 553(c).

[11] Mid-Tex Electric Cooperative v. Federal Energy Regulatory Commission, 822 F.2d 1123, 1132 (D.C. Cir. 1987), cited by ACUS at 19.

[12] *Best Practices for Agency Use of the Good Cause Exemption for Rulemaking* at 13.

[13] *Id.* at 15.

[14] We are not commenting on the proposed deletion of these particular regulations.

the interest of the public would be defeated by any requirement of advance notice," as when announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent."[15] It also gives emergency situations as an example. This exemption is not relevant to the FCC's proposed DFR, as the FCC does not even imply that a public emergency or a danger of misuse of the advance notice period would be required as the basis for the procedure.

We agree that the FCC has the authority to forego the full opportunity to comment under the APA if the situation meets the APA's good cause exception. We do not agree, however, that the proposed DFR outlines a process to ensure that it will only be used for regulatory changes for which comments are "impracticable," "unnecessary," or "contrary to the public interest." We urge the Commission to ensure broad public participation in its rulemaking, because that is good policy and because the law requires it.

B. The DFR proposes a procedure which appears likely to violate the APA's requirements ensuring interested parties have the opportunity to comment.

Providing only a ten-day window to comment and coupling it with a prohibition on late-filed comments creates a substantial risk that many parties affected by the proposed change will not be able to file detailed comments. Yet, comments without necessary details describing the harm that will be caused by changing a rule may not be sufficient to satisfy the FCC's requirement that "significant adverse comments" be filed to trigger the reconsideration of the proposed change.

For example, our groups, representing low and moderate-income consumers, often file comments together in Commission proceedings to describe how proposals will help or harm our clients and members.[16] These joint comments benefit from our collaboration, in which the

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[15] *Id. at 17.*

[16] *See e.g.* https://www.fcc.gov/ecfs/document/1042853493690/1; https://www.fcc.gov/ecfs/search/search-filings/filing/10606186902940; https://www.fcc.gov/ecfs/search/search-filings/filing/1050859496645; https://www.fcc.gov/ecfs/search/search-filings/filing/10811042429879.

knowledge, experience and skills of the different groups produce a product that is more than a sum of its parts. But collaboration takes time—time which is unavailable in the ten-day period proposed in the DFR. Additionally, many groups are membership organizations which require coordination and agreement from leadership committees before the organization can join public comments.[17]

Also, state attorneys general often file joint comments to the Commission recommending actions to protect consumers from scams and unwanted texts or calls.[18] These state political offices routinely need much more than 10 days to apprise staff in other states' offices of the issues, discuss the appropriate response, draft comments, and approve sign-ons.

We urge the Commission not to dismiss these concerns simply because in this instance we have managed to pull together the instant comments within the ten-day deadline. We have no doubt that given more time, we would have included the ideas and input of more groups representing consumers.

Comments recently filed by twelve local governments describe with particularity how this short time frame is "problematic for entities like Local Government Commenters," by undermining their ability to consult and coordinate comments.[19] Those comments also point out that this illustrates a serious flaw in the FCC's assumption that futures DFRs do not impose a burden on small entities.[20]

Moreover, the Commission has not explained why it is necessary, appropriate, or even a good idea to set up this expedited procedure for routine use by itself and its bureaus and offices.

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[17] One example is NASUCA, the National Association of State Utility Consumer Advocates, who represent consumers in state utility proceedings. *See* fn. 16*, supra.*

[18] *See e.g.,* Reply Comments of Fifty-One (51) State Attorneys General, CG Docket No. 21-402, December 12, 2022, https://www.fcc.gov/ecfs/search/search-filings/filing/1209491030675.

[19] Local Governments, Adverse Comments, GN Docket No. 24-133. August 6, 2025, https://www.fcc.gov/ecfs/document/1080688432996/1 at 3-4.

[20] *Id.* at 4.

Nor has the Commission provided a specific description of exactly what types of regulatory changes it considers will fit within the three specific exemptions the APA allows. As a result, setting up a procedure to limit comments to only ten days, and not accepting comments after ten days, has not been justified and appears to be arbitrary.

The FCC misinterprets the requirements of the APA when it says that by providing 10 days to file comments, it is providing the public with *"expanded* comment opportunities when it is not legally required to do so under the 'good cause' standard."[21] This is only true if the Commission presupposes that rulemaking is unnecessary or the proposed rule change is otherwise subject to the good cause exemption to the APA. Where a rule change is not exempt from the APA's rulemaking requirements, a 10-day comment period is illegal. The minimum time to comment on regulatory changes is 30 days under the APA.[22] The FCC has not explained at all, let alone in a satisfactory way, why a 10-day window for comments on rule changes is ever appropriate, even when the change is covered by one of the exemptions.

C. Effectively excluding valuable public and industry input in the DFR process will weaken the FCC's regulatory process and undermine transparency.

In addition to limiting comments to just ten days, the DFR procedure would eliminate the possibility of accepting reply comments, in which commenters respond to the comments made by others. Reply comments are often thoughtful considerations by the public and the regulated entities regarding previous comments, and provide valuable information to the Commission in its rulemaking process. Yet these will not be available if the shortened ten-day limit is imposed. The reply comments are often particularly valuable to the Commission because it means that the issue is

[21] DFR at ¶ 5.

[22] 5 U.S.C. § 553(d)

joined, and parties can rebut the opposing party's reasoning or point out facts that undermine its claim.

This FCC needs this back-and-forth in order to make good decisions. Without reply comments, the FCC may end up relying on incorrect information that another party could have rebutted. Or it may choose a solution to a problem that a comment suggested, without knowing that the solution would impose unnecessary hardships and that better solutions were available.

Under the normal process contemplated in the Administrative Procedure Act, after taking public comments into account, the agency must publish the text of a final rule and include "a concise general statement of [its] basis and purpose."[23] This explanation of the Commission's consideration of the diverse comments submitted by the industry and the public gives everyone concerned the justification for the rule change, as well as the background and necessity for it.

However, in the DFR context, if the FCC (or the relevant bureau or office) determines that no significant adverse comments were received that justify reconsideration of the rule, there will be no public issuance of that determination, and the rule will be automatically effective 60 days after the original publication of the proposed regulation.[24] As a result, the impacted parties will not know why the comments filed were not considered significant adverse comments; they will have no information about the Commission's evaluation of the comments or even be assured that their comments were considered. This will remove important transparency in these regulatory proceedings.

This expedited DFR process presents a real barrier to public participation. Nothing in the DFR itself explains why such a process is a good idea, or why the FCC needs to rush through these

[23] 5 U.S.C. § 553(c).

[24] DFR at ¶ 6, 7.

regulatory procedures. Doing so would seriously undermine the valuable input from industry and the public.

The Administrative Conference of the United States's (ACUS) recommendations regarding Direct Final Rules are cited by the Commission as support for this proposed DFR.[25] Yet the ACUS recommends that even when a regulatory procedure justifies the use of one of the exemptions for an expedited process, there should be "a period of at least 30 days during which interested persons may submit comments regarding the substance of the rule."[26] A thirty-day period provides a significantly better balance between the need to avoid unwarranted delay and the risk that consumers and others will not have sufficient time to file meaningful comments.

Finally, the process undermines the viability of Commission regulations**.** Recent decisions from the U.S. Supreme Court, including *Loper Bright Enterprises v. Raimondo,*[27] and *McLaughlin Chiropractic Associates, Inc. v. McKesson Corp., et al.,*[28] highlight the importance of careful, considered regulatory changes to FCC regulations.

The *McLaughlin* decision permits any court to evaluate the Commission's regulations years after they were issued to test whether the FCC's interpretation of the applicable statute was correct.[29] The district court reviews of agency regulations that will now be taking place long after the initial issuance of the regulation will use the standard of review set out by the U.S. Supreme Court in the *Loper Bright* decision. As noted in that decision, the Supreme Court expects courts reviewing agency decisions to rely on –

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[25] DFR at Note 10; Administrative Conference of the United States, *Adoption of Recommendations*, 89 Fed. Reg. 106406 (Dec. 30, 2024); https://www.govinfo.gov/content/pkg/FR-2024-12-30/pdf/2024-31352.pdf.

[26] *Id.* at 106409.

[27] Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 402, 144 S.Ct. 2244 (2024).

[28] McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp., 606 U.S. 146, 145 S. Ct. 2006, 2019 (2025)

[29] *Id.* at 2019 (holding that the Hobbs Act does not preclude future review by the courts of FCC regulations).

> the agency's "body of experience and informed judgment," among other information, at its disposal. *Skidmore*, 323 U.S. at 140, 65 S.Ct. 161. And although an agency's interpretation of a statute "cannot bind a court," it may be especially informative "to the extent it rests on factual premises within [the agency's] expertise." . . . Such expertise has always been one of the factors which may give an Executive Branch interpretation particular "power to persuade, if lacking power to control." *Skidmore*, 323 U.S. at 140, 65 S.Ct. 161. (citations omitted).[30]

However, in the DFR process, the agency will not be publishing its basis for regulatory changes after consideration of industry and public comments. This will undermine future evaluations of these regulatory actions in the courts and increase the risk that a rule will be ineffectual because the Commission failed to set forth its reasoning. The FCC's proposed DFR process will be counterproductive to its own goal of streamlining regulations by limiting the opportunity for important information to be provided by the public, and by not providing a full explanation for its determination of the significance of adverse comments.

III. Allowing FCC bureaus and offices to issue regulatory changes using the DFR process is at best confusing, and likely illegal.

The FCC is also proposing to allow bureaus and offices, pursuant to delegated authority, to use the DFR procedures "to adopt or repeal some rules without notice and comment." Presumably the envisioned process will include the same ten days within which interested persons and regulated entities can file comments. But that is not made clear in the DFR.

This confusion is compounded by the fact that the DFR refers to the section of the APA that permits changes to agency internal regulations without notice and comment.[31] We do not quarrel with the FCC's avoidance of notice and comment for delegation of its authority as this section of the APA unquestionably allows.

[30] Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2267.

[31] 5 USC § 553(b)(4)(A)

But the APA's permission to the FCC to change its rules to accomplish delegation of some of its duties does not permit the agency to delegate actions that the agency itself cannot take. Work that is delegated must still be conducted in a legal way. If the subsidiary adopts or deletes agency regulations, all of the rules required by the APA still apply. All of the reasons set forth in Section II that adoption of the proposed DFR process for Commission rulings would be illegal and bad policy apply equally, if not more so, to rulings made on delegated authority.

Additionally, regulatory actions taken by offices and bureaus raise the question of whether those actions are considered actions by the full Commission, such that they are then "final" Commission actions. The APA requires that a person impacted by agency action must exhaust their administrative remedies before challenging that action in court.[32] If the intent of the proposed DFR would be to treat bureau action as final then they can be immediately appealed for judicial review.

But this interpretation may not be legal under the Communications Act. Congress explicitly provided that the filing of an application for review by the Commission is a condition precedent to judicial review of any order "taken pursuant to a delegation."[33] This statute indicates that Congress intended to prohibit treating any action taken pursuant to delegated authority as final, until the full Commission has received a timely application for review.

If a regulatory change could become automatically operational, as contemplated by the DFR, parties that are negatively impacted by that proposal could be unable to seek immediate judicial review. Yet, they would be required to comply with the changed rule if they are a regulated entity, or subject to the effect of the new regulation if they are a member of the public.

[32] 5 U.S.C. § 704

[33] 47 U.S.C. § 155(c)(7).

This confusion is further compounded by the fact that the Commission has an unfortunate history of allowing some Applications for Review to sit without a decision for years.[34] While there is a time limit within which the Commission must rule on a petition for reconsideration filed pursuant to 47 U.S.C. § 405(a) in subsection (b), there does not seem to be an equivalent time limit for ruling on applications for review of actions taken pursuant to delegated authority under 47 U.S.C. § 155(c)(7). As the proposed delegation of authority to take immediate action without compliance with the APA requirements appears to deprive impacted parties of due process, it is likely illegal.

IV. Conclusion

The FCC is tasked by Congress with regulating multiple essential industries in the United States. Appropriate, well-considered, fair and balanced regulation is necessary to protect both those entities engaged in the regulated activities and the public who rely on those industries.

Changes to regulations should be effectuated only through careful, thoughtful and considered processes. Both the industries impacted, and the public, should have full opportunity to participate in proceedings, and the FCC should ensure that it explains its decision-making process and final determination of the issues in a transparent manner.[35] The DFR would not meet any of these goals.

As explained, there are many questions about how the DFR will work that are not addressed in the Commission's statement. If the DFR is finalized as written, it will undoubtedly lead to multiple challenges, which will be costly and time-consuming.

We urge the Commission to clarify these issues before proceeding with the DFR as written.

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[34] We know this to be the case as we have an application for review that was filed in 2020 but is still pending before the Commission. *See* https://www.fcc.gov/ecfs/document/10724588100006/1

[35] *See e.g.* https://www.acus.gov/document/elimination-certain-exemptions-apa-rulemaking-requirements ("[T]o assure that Federal agencies will have the benefit of the information and opinion that can be supplied by persons whom regulations will affect, the Administrative Procedure Act requires that the public must have opportunity to participate in rulemaking proceedings.")

Respectfully submitted, the 14th day of August, 2025, by:

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