



January 21, 2022

VIA EMAIL (FOIAAppeal@ftc.gov)

Freedom of Information Act Appeal
Office of the General Counsel, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Freedom of Information Act Appeal in Case No. FOIA-2022-00323

To Whom it May Concern:

Pursuant to 16 C.F.R. § 4.11, the Chamber of Commerce of the United States of America (“Chamber”) appeals the determination of Assistant General Counsel Dione Stearns (dated January 14, 2022) regarding the Freedom of Information Act (“FOIA”) request identified above (dated December 2, 2021). The Chamber filed a specific, tailored, and reasonable FOIA request, yet the Commission simply refused to process it. The FTC should promptly reverse this determination.

This is the third time in one month that the FTC has refused to comply with its obligations under FOIA. As detailed below, the Chamber sought the release of all records from a five-month period related to votes cast by a Former Commissioner over an eight-day period. This request is specific, seeking a clear and well-defined universe of documents. And this request is narrow on at least two levels, seeking only six months’ worth of records pertaining to votes cast over just eight days. Yet, once again, the Commission has refused to respond *at all*.

It is now clear that the FTC is simply trying to conceal its operations from the public for as long as possible. Rather than respond to our FOIA request within the twenty days that FOIA provides, the Commission unilaterally extended the deadline by claiming it needed to “search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.” Stearns Letter (January 3, 2022), at p. 2, Ex. A. But now, the Commission has exposed that justification as pure pretext for prolonging these proceedings as much as possible. Rather than produce a *single document*—much less “collect” records from “field facilities”—the Commission has refused to produce *anything*. Stearns Letter (January 14, 2022), at p. 1, Ex. B. That summary refusal exposes the Commission’s ten-day extension as unjustified, and the summary refusal has no legal basis regardless. The FTC is not above the law. It is obligated to provide the transparency that the law demands and the public deserves. If you do not correct the Commission’s course, we will have no choice but to seek judicial intervention.

In the Chamber’s December 2, 2021 FOIA request, we sought the following:

All records related to votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021. This includes, but is not limited to, the specific votes he purported to take that have yet to be made public or might never be made public as of the date of this request; records related to any matter that was not publicly announced by the FTC prior to December 2, 2021; matters that were not yet voted on by all other Commissioners before October 8, 2021 but were voted on by Former Commissioner Chopra; legal analysis performed or received by the FTC; communications between the FTC and the White House; as well as press statements or drafts of press statements. The timeframe for the Chamber's request is July 1, 2021 to the present. For purposes of this FOIA request, we seek as a priority and initial matter documents reflecting the subject matter and dates of votes that Former Commissioner Chopra purported to take between September 30, 2021 and October 8, 2021 on any or all matters that had not been voted on by all other Commissioners before October 8, 2021, with additional records subject to this request provided on a rolling basis thereafter. The term "records" as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

December 2, 2021 FOIA Request, Ex. C. As simply reading this request makes clear, the Chamber sought a discrete and straightforward category of records—those related to votes cast by former Commissioner Chopra in an eight-day period—over a limited time span of just five months.

* * *

The Commission's refusal to process the Chamber's request is unfounded and should be reversed. Without waiving any other bases for disclosure of the material that the Chamber requested, reversal is required because the Chamber's request does not, as the Commission claimed, "create[] an undue burden on the agency because it creates an unreasonable hardship for the agency to process." Stearns Letter (January 14, 2022). The Chamber requested records on a single topic in a date range of just five months. The bulk of these records—memoranda, press statements, internal and external emails, text messages, and the like—are almost certainly stored electronically and can thus be easily located through searches of computers and mobile phones.

FOIA is a vital statute that provides "a means for citizens to know what their Government is up to." *Pub. Emps. for Env't Resp. v. U.S. Env't Prot. Agency*, 314 F. Supp. 3d 68, 73 (D.D.C. 2018) (cleaned up). It "was enacted to promote the broad disclosure of Government records by generally requiring federal agencies to make their records available to the public on request." *Id.* To this end, FOIA requires that agencies make "promptly available to any person" records that are

not otherwise exempt in response to “any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed” 5 U.S.C. § 552(a)(3)(A).

FOIA imposes an extremely heavy burden on agencies that seek to deny FOIA requests because the requests are too burdensome to answer. Such agencies “bear[] the burden to provide [a] sufficient explanation as to why such a search would be unreasonably burdensome.” *Ayuda, Inc. v. FTC*, 70 F. Supp. 3d 247, 275 (D.D.C. 2014). This is a “substantial” burden for the agency to carry. *Tereshchuk v. Bureau of Prisons*, 67 F. Supp. 3d 441, 455–56 (D.D.C. 2014).

Assistant General Counsel Stearns’s summary denial of the Chamber’s request provides no explanation for the Commission’s denial and thus comes nowhere close to carrying the agency’s significant burden of establishing an unreasonable burden. Courts have consistently refused to find that a request is unreasonably burdensome based on an agency’s “conclusory statements,” *Hall v. CIA*, 881 F.Supp.2d 38, 53 (D.D.C. 2012)—requiring instead that an agency “articulate its reasons for nondisclosure ‘with reasonably specific detail,’” *Shapiro v. Cent. Intelligence Agency*, 170 F. Supp. 3d 147, 156 (D.D.C. 2016) (citation omitted). But “conclusory statements” are all that Assistant General Counsel Stearns provided. For that reason alone, reversal is required.

Even if the Commission had tried to explain, though, it is clear that there would be no basis to deem the Chamber’s request unduly burdensome. *First*, the Chamber’s request seeks nothing close to an unreasonable volume of documents. The “dominant objective of FOIA is disclosure,” and courts are accordingly “skeptical that a FOIA request may be denied based on sheer volume of records requested alone.” *Keeping Gov’t Beholden, Inc. v. Dep’t of Just.*, 2021 WL 5918627, at *6 (D.D.C. Dec. 13, 2021) (citing *Yeager v. DEA*, 678 F.2d 315, 322, 326 (D.C. Cir. 1982)). Again, the Chamber’s request seeks a discrete set of documents related to the narrow topic of “votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021.” December 2, 2021 FOIA Request, Ex. C. That request is unlikely to yield an avalanche of records and is well within the norms of FOIA—a statute that, in any event, “puts no restrictions on the quantity of records that may be sought.” *Tereshchuk*, 67 F. Supp. 3d at 454; *see also, e.g.*, Dep’t of Justice, Office of Info. Privacy, *FOIA Update Vol. IV, No. 3*, at 5 (1983) (“The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not ‘reasonably describe’ records”).

Second, the Chamber’s request seeks documents that are almost certainly stored electronically—another reason the request is not unduly burdensome. Performing electronic searches of computers and mobile phones is much less time consuming than digging through dusty boxes for paper files. Courts have recognized as much, rejecting claims of an unreasonable burden where “emails and their attachments can be searched using an eDiscovery tool without needing to open each email and its attachments individually.” *Leopold v. National Security Agency*, 196 F. Supp. 3d 67, 75 (D.D.C. 2016).

Finally, a legion of judicial decisions have rejected agency attempts to deny FOIA requests as unreasonably burdensome in circumstances involving requests that were far more burdensome than the Chamber's. For example, courts have found that requests are not unduly burdensome when processing them would require:

- searching documents for “roughly 2,200 hours,” *Kwoka v. Internal Revenue Serv.*, 2018 WL 4681000, at *5 (D.D.C. Sept. 28, 2018);
- reviewing 24,840 pages of information, *Tereshchuk*, 67 F. Supp. 3d at 455;
- reviewing 1,212 pages of manuals, *Brown v. Washington Metro. Area Transit Auth.*, 2020 WL 806197, at *10 (D.D.C. Feb. 18, 2020); or
- searching through nearly 17,0000 hard-copy file folders. *Hall v. C.I.A.*, 881 F. Supp. 2d 38 (D.D.C. 2012).

The Chamber's request is far more limited than any of these.

* * *

The “basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citation omitted). The FTC's categorical refusal to comply with that vital transparency statute—and thus enable the public to hold it accountable for how it exercises its official power—is astonishing and inconsistent with the rule of law. We trust that you will promptly remedy this error.

Sincerely,



Daryl Joseffer
Executive Vice President and Chief Counsel
U.S. Chamber Litigation Center
U.S. Chamber of Commerce
1615 H Street, NW
Washington, D.C. 20062
202-463-5495 (phone)
202-463-5346 (fax)
DJoseffer@USChamber.com

EXHIBIT A



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 3, 2022

Mary Carter
US Chamber of Commerce
1615 H. Street, NW
Washington, DC 20062

RE: FOIA-2022-00322 - 2022-00324

Dear Ms. Carter:

On December 3, 2021 we received your three (3) FOIA requests dated December 2, 2021 under the Freedom of Information Act seeking access to the following records:

- 1. FOIA 2022-00322:** Full and complete copies of (a) the Office of the Secretary Procedures Manual dated April 7, 1994, and any newer version, including updates, revisions, or successor or superseding documents; and (b) the document containing the Policy with Respect to Counting Votes of Departing and Arriving Commissioners dated March 27, 1984, and any newer version, including updates or revisions, or successor or superseding documents.
- 2. FOIA 2022-00323:** All records related to votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021. This includes, but is not limited to, the specific votes he purported to take that have yet to be made public or might never be made public as of the date of this request; records related to any matter that was not publicly announced by the FTC prior to December 2, 2021; matters that were not yet voted on by all other Commissioners before October 8, 2021 but were voted on by Former Commissioner Chopra; legal analysis performed or received by the FTC; communications between the FTC and the White House; as well as press statements or drafts of press statements. The timeframe for the Chamber's request is July 1, 2021 to the present. For purposes of this FOIA request, we seek as a priority and initial matter documents reflecting the subject matter and dates of votes that Former Commissioner Chopra purported to take between September 30, 2021 and October 8, 2021 on any or all matters that had not been voted on by all other Commissioners before October 8, 2021, with additional records subject to this request provided on a rolling basis thereafter. The term records as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

3. **FOIA 2022-00324:** All records related to counting votes of Former Commissioners for a period of time after their departure from the Commission. This request includes, but is not limited to, any legal analysis performed or received by the FTC; any and all internal guidance or rules governing voting procedures; how long the agency counts votes following a Commissioner's departure and what actions can extend or reopen a motion to vote; the history of this practice; any communications between the FTC and the White House; and any press statements or drafts of press statements. The timeframe for this request is November 23, 2020 (the start of the presidential transition period) to the present. The term "records" as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

This letter is to inform you that we will be unable to respond to your request within the statutory 20-business day deadline as codified in 5 U.S.C. § 552(a)(6)(A)(i).

The FOIA, as amended in 2002, allows for an extension of the 20-day deadline if one of three types of "unusual circumstances" exist. *See* 5 U.S.C. § 552(a)(6)(B)(iii). Your request falls under the following circumstance:

- The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

We are continuing to process your request at this time. If you should have any questions regarding your request, or if you would like to narrow your request to reduce the necessary response time, please contact Anthony Ellis at rellis@ftc.gov.

You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at 202-326-3355 or via e-mail at rgold@ftc.gov; or from the Office of Government Information Services via email at ogis@nara.gov, via fax at 202-741-5769, or via mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740. Please note that the FOIA Public Liaison's role relates to comments, questions or concerns that a FOIA Requester may have with or about the FOIA Response. The FOIA Public Liaison's role does not relate to taking action in matters of private controversy nor can he resolve individual complaints.

Sincerely,

Handwritten signature of Dione J. Stearns, followed by the initials "R.A.E." in a separate column.

Dione J. Stearns
Assistant General Counsel

EXHIBIT B



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 14, 2022

Mary Carter
US Chamber of Commerce
1615 H Street, NW
Washington, DC 20062

Re: FOIA-2022-00323

Dear Ms. Carter:

This is in response to your request dated December 3, 2021 under the Freedom of Information Act seeking access to:

All records related to votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021. This includes, but is not limited to, the specific votes he purported to take that have yet to be made public or might never be made public as of the date of this request; records related to any matter that was not publicly announced by the FTC prior to December 2, 2021; matters that were not yet voted on by all other Commissioners before October 8, 2021 but were voted on by Former Commissioner Chopra; legal analysis performed or received by the FTC; communications between the FTC and the White House; as well as press statements or drafts of press statements. The timeframe for the Chamber's request is July 1, 2021 to the present. For purposes of this FOIA request, we seek as a priority and initial matter documents reflecting the subject matter and dates of votes that Former Commissioner Chopra purported to take between September 30, 2021 and October 8, 2021 on any or all matters that had not been voted on by all other Commissioners before October 8, 2021, with additional records subject to this request provided on a rolling basis thereafter. The term records as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

Your request creates an undue burden on the agency because it creates an unreasonable hardship for the agency to process, even if the specificity requirements are met. *See Nat'l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 147 (D.D.C. 2013) (quoting *Am. Fed'n of Gov't Emps., Local 2782 v. U.S. Dept. of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990)). The courts have opined that even if a request reasonably describes the records being sought, the request can still be considered improper if the request is "so broad as to impose an unreasonable burden upon the agency." *Id.*

Overbroad and unreasonably burdensome requests are considered invalid because “FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters.” *Ass’n Archives & Research Ctr., Inc. v. CIA*, 720 F. Supp. 217, 219 (D.D.C. 1989). Even if the request meets the FTC FOIA “precise description” requirement, it can still be unduly burdensome on the agency to process. Therefore, we are denying your request in full.

If you have any questions about the way we are handling your request or about the FOIA regulations or procedures, please contact Anthony Ellis at rellis@ftc.gov. If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, or via email at FOIAAppeal@ftc.gov, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at 202-326-3355 or via e-mail at rgold@ftc.gov; or from the Office of Government Information Services via email at ogis@nara.gov, via fax at 202-741-5769, or via mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740. Please note that the FOIA Public Liaison’s role relates to comments, questions or concerns that a FOIA Requester may have with or about the FOIA Response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dione J. Stearns".

Dione J. Stearns
Assistant General Counsel

EXHIBIT C



U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

December 2, 2021

VIA EMAIL: FOIA@FTC.GOV

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
Washington, DC 20580

RE: Freedom of Information Act Request; Expedited Treatment Requested

To Whom it May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 16 C.F.R. § 4.11, the U.S. Chamber of Commerce (“the Chamber”) hereby requests the following information:

All records related to votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021. This includes, but is not limited to, the specific votes he purported to take that have yet to be made public or might never be made public as of the date of this request; records related to any matter that was not publicly announced by the FTC prior to December 2, 2021; matters that were not yet voted on by all other Commissioners before October 8, 2021 but were voted on by Former Commissioner Chopra; legal analysis performed or received by the FTC; communications between the FTC and the White House; as well as press statements or drafts of press statements. The timeframe for the Chamber’s request is July 1, 2021 to the present. For purposes of this FOIA request, we seek as a priority and initial matter documents reflecting the subject matter and dates of votes that Former Commissioner Chopra purported to take between September 30, 2021 and October 8, 2021 on any or all matters that had not been voted on by all other Commissioners before October 8, 2021, with additional records subject to this request provided on a rolling basis thereafter. The term “records” as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

We further request that the FOIA officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted.

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, I request that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

The Chamber requests a fee waiver because disclosure of this information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government. The Chamber is a non-profit organization organized under Section 501(c)(6) of the Internal Revenue Code. Disclosure of this information is not primarily in the Chamber's commercial interest because it seeks to use this information to educate itself and the public about the FTC's ongoing activities. *See* 16 C.F.R. § 4.8(e)(2). The FTC's activities affect a broad swath of the United States economy and business entities across the country—many of whom are members of the Chamber. The disclosure of these documents will allow the Chamber, its members, and the public to better understand the FTC's recent and future activities and the potential impact of these actions. If this request for a fee waiver is denied, the Chamber is willing to pay fees up to \$2,500.

The Chamber also requests expedited treatment of this request because the Chamber's mission involves disseminating information—to both its membership and the public—regarding economic issues in the United States, especially as they relate to the Federal Government. The FTC's actions impact the Chamber's members and other members of the public. *See* 16 C.F.R. § 4.11(a)(1)(G). The Chamber must be able to provide information regarding the FTC's activities to its members given their significant impact—so its members may comply with new regulations and policies, so they may protect their rights, and so they may order their own affairs. The impact of these actions is far-reaching, requiring the urgent release of documents and information related thereto in order to understand the FTC's activities and their potential impact on the Chamber's members.

Federal law requires that the FTC produce these records within twenty (20) business days or, in unusual circumstances, within thirty (30) business days. *See* 5 U.S.C. § 552(a)(6)(A)-(B); *see also* 16 C.F.R. § 4.11(a)(1)(ii). If the Chamber's request is denied in whole or in part, please justify all denials by reference to specific exemptions under the FOIA.

If you have any questions about this request, please contact me by email. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Heather".

Sean Heather
Senior Vice President
International Regulatory Affairs & Antitrust
U.S. Chamber of Commerce
(202) 463-5368
SHeather@USChamber.com



January 14, 2022

VIA EMAIL (FOIAAppeal@ftc.gov)

Freedom of Information Act Appeal
Office of the General Counsel, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Freedom of Information Act Appeal in Case No. FOIA-2022-00324

To Whom it May Concern:

Pursuant to 16 C.F.R. § 4.11, the Chamber of Commerce of the United States of America (“Chamber”) appeals the determination of Assistant General Counsel Dione Stearns (dated January 10, 2022) regarding the Freedom of Information Act (“FOIA”) request identified above (dated December 2, 2021). The Chamber filed a specific, tailored, and reasonable FOIA request, yet the Commission simply refused to process it. The FTC should promptly reverse this determination.

As explained further below, the Chamber sought the release of all records from a one-year period related to counting the votes of Former Commissioners. That request is specific, seeking a discrete set of documents. That request is narrow, seeking only documents from November 23, 2020, to December 2, 2021. Yet the Commission refused even to *respond*—summarily claiming that answering the request would take too much work. This is the second time in two weeks that the Commission has flouted its obligations under FOIA and refused to provide the transparency that the public deserves and the law demands. We trust you will put an end to this stonewalling, reverse this baseless denial, and direct the processing of the Chamber’s request forthwith. If the FTC refuses to provide transparency on its own, we are confident the courts will require it to.

In the Chamber’s December 2, 2021 FOIA request, we sought the following:

All records related to counting votes of Former Commissioners for a period of time after their departure from the Commission. This request includes, but is not limited to, any legal analysis performed or received by the FTC; any and all internal guidance or rules governing voting procedures; how long the agency counts votes following a Commissioner’s departure and what actions can extend or reopen a motion to vote; the history of this practice; any communications between the FTC and the White House; and any press statements or drafts of press statements. The timeframe for this request is November 23, 2020 (the start of the presidential transition period) to the present. The term “records” as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing

messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

December 2, 2021 FOIA Request, Ex. A.

As simply reading this request makes clear, the Chamber sought a discrete and straightforward category of records—those related to counting the votes of Former Commissioners—over a limited period of just over one year. Rather than process this request as FOIA requires, on January 3, 2022, Assistant General Counsel Stearns invoked “exceptional circumstances” to give the Commission additional time to respond, and then proceeded to summarily deny the request as overly burdensome. In the denial letter’s words, the “request creates an undue burden on the agency because it creates an unreasonable hardship for the agency to process, even if the specificity requirements are met.” January 10, 2022 Stearns Letter, Ex. B. Assistant General Counsel Stearns’s letter provided no explanation for why processing this request creates an “undue burden,” nor did Assistant General Counsel Stearns say whether the Commission even attempted to process the request—over the course of the month that the request was pending—before concluding that processing it would be too much trouble.

* * *

The Commission’s refusal to process the Chamber’s request is unfounded and should be reversed. Without waiving any other bases for disclosure of the material that the Chamber requested, reversal is required because the Chamber’s request was not unduly burdensome. The Chamber requested records on a single topic in a date range of just over one year. The bulk of these records—procedural rules, internal and external emails, text messages, and the like—are almost certainly stored electronically and can thus be easily located through searches of computers and mobile phones.

FOIA is a vital statute that provides “a means for citizens to know what their Government is up to.” *Pub. Emps. for Env’t Resp. v. U.S. Env’t Prot. Agency*, 314 F. Supp. 3d 68, 73 (D.D.C. 2018) (cleaned up). It “was enacted to promote the broad disclosure of Government records by generally requiring federal agencies to make their records available to the public on request.” *Id.* To this end, FOIA requires that agencies make “promptly available to any person” records that are not otherwise exempt in response to “any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed” 5 U.S.C. § 552(a)(3)(A).

FOIA imposes an extremely heavy burden on agencies who seek to deny FOIA requests because the requests are too burdensome to answer. Such agencies “bear[] the burden to provide [a] sufficient explanation as to why such a search would be unreasonably burdensome.” *Ayuda, Inc. v. FTC*, 70 F. Supp. 3d 247, 275 (D.D.C. 2014). This is a “substantial” burden for the agency to carry. *Tereshchuk v. Bureau of Prisons*, 67 F. Supp. 3d 441, 455–56 (D.D.C. 2014).

Assistant General Counsel Stearns’s summary denial of the Chamber’s request provides no explanation for the Commission’s denial and thus comes nowhere close to carrying the agency’s significant burden of establishing an unreasonable burden. Courts have consistently refused to find that a request is unreasonably burdensome based on an agency’s “conclusory statements,” *Hall v. CIA*, 881 F.Supp.2d 38, 53 (D.D.C. 2012)—requiring instead that an agency “articulate its reasons for nondisclosure ‘with reasonably specific detail,’” *Shapiro v. Cent. Intelligence Agency*, 170 F. Supp. 3d 147, 156 (D.D.C. 2016) (citation omitted). But “conclusory statements” are all that Assistant General Counsel Stearns provided. For that reason alone, reversal is required.

Even if the Commission had tried to explain, though, it is clear that there would be no basis to deem the Chamber’s request unduly burdensome. *First*, the Chamber’s request seeks nothing close to an unreasonable volume of documents. The “dominant objective of FOIA is disclosure,” and courts are accordingly “skeptical that a FOIA request may be denied based on sheer volume of records requested alone.” *Keeping Gov’t Beholden, Inc. v. Dep’t of Just.*, 2021 WL 5918627, at *6 (D.D.C. Dec. 13, 2021) (citing *Yeager v. DEA*, 678 F.2d 315, 322, 326 (D.C. Cir. 1982)). Again, the Chamber’s request seeks a discrete set of documents related to the narrow topic of “counting votes of Former Commissioners for a period of time after their departure from the Commission.” December 2, 2021 FOIA Request, Ex. A. That request is unlikely to yield an avalanche of records and is well within the norms of FOIA—a statute that, in any event, “‘puts no restrictions on the quantity of records that may be sought.’” *Tereshchuk*, 67 F. Supp. 3d at 454; *see also, e.g.*, Dep’t of Justice, Office of Info. Privacy, *FOIA Update Vol. IV, No. 3*, at 5 (1983) (“The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not ‘reasonably describe’ records”).

Second, the Chamber’s request seeks documents that are almost certainly stored electronically—another reason the request is not unduly burdensome. Performing electronic searches of computers and mobile phones is much less time consuming than digging through dusty boxes for paper files. Courts have recognized as much, rejecting claims of an unreasonable burden where “emails and their attachments can be searched using an eDiscovery tool without needing to open each email and its attachments individually.” *Leopold v. National Security Agency*, 196 F. Supp. 3d 67, 75 (D.D.C. 2016).

Finally, a legion of judicial decisions have rejected agency attempts to deny FOIA requests as unreasonably burdensome in circumstances involving requests that were far more burdensome than the Chamber’s. For example, courts have found that requests are not unduly burdensome when processing them would require:

- searching documents for “roughly 2,200 hours,” *Kwoka v. Internal Revenue Serv.*, 2018 WL 4681000, at *5 (D.D.C. Sept. 28, 2018);
- reviewing 24,840 pages of information, *Tereshchuk*, 67 F. Supp. 3d at 455;

- reviewing 1,212 pages of manuals, *Brown v. Washington Metro. Area Transit Auth.*, 2020 WL 806197, at *10 (D.D.C. Feb. 18, 2020); or
- searching through nearly 17,000 hard-copy file folders. *Hall v. C.I.A.*, 881 F. Supp. 2d 38 (D.D.C. 2012).

The Chamber's request is far more limited than any of these.

* * *

Sunshine is the best disinfectant and Congress enacted FOIA to prohibit agencies like the FTC from operating in the shadows. The FTC's refusal thus far to comply with that vital transparency statute does a disservice to the public and the rule of law. We trust that you will follow the law and promptly remedy this error.

Sincerely,



Daryl Joseffer
Executive Vice President and Chief Counsel
U.S. Chamber Litigation Center
U.S. Chamber of Commerce
1615 H Street, NW
Washington, D.C. 20062
202-463-5495 (phone)
202-463-5346 (fax)
DJoseffer@USChamber.com

EXHIBIT A



U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

December 2, 2021

VIA EMAIL: FOIA@FTC.GOV

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
Washington, DC 20580

RE: Freedom of Information Act Request; Expedited Treatment Requested

To Whom it May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 16 C.F.R. § 4.11, the U.S. Chamber of Commerce (“the Chamber”) hereby requests the following information:

All records related to counting votes of Former Commissioners for a period of time after their departure from the Commission. This request includes, but is not limited to, any legal analysis performed or received by the FTC; any and all internal guidance or rules governing voting procedures; how long the agency counts votes following a Commissioner’s departure and what actions can extend or reopen a motion to vote; the history of this practice; any communications between the FTC and the White House; and any press statements or drafts of press statements. The timeframe for this request is November 23, 2020 (the start of the presidential transition period) to the present. The term “records” as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

We further request that the FOIA officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted.

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, I request that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

The Chamber requests a fee waiver because disclosure of this information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government. The Chamber is a non-profit organization organized under Section 501(c)(6) of the Internal Revenue Code. Disclosure of this information is not primarily in the Chamber’s commercial interest because it seeks to use this

information to educate itself and the public about the FTC's ongoing activities. *See* 16 C.F.R. § 4.8(e)(2). The FTC's activities affect a broad swath of the United States economy and business entities across the country—many of whom are members of the Chamber. The disclosure of these documents will allow the Chamber, its members, and the public to better understand the FTC's recent and future activities and the potential impact of these actions. If this request for a fee waiver is denied, the Chamber is willing to pay fees up to \$2,500.

The Chamber also requests expedited treatment of this request because the Chamber's mission involves disseminating information—to both its membership and the public—regarding economic issues in the United States, especially as they relate to the Federal Government. The FTC's actions impact the Chamber's members and other members of the public. *See* 16 C.F.R. § 4.11(a)(1)(G). The Chamber must be able to provide information regarding the FTC's activities to its members given their significant impact—so its members may comply with new regulations and policies, so they may protect their rights, and so they may order their own affairs. The impact of these actions is far-reaching, requiring the urgent release of documents and information related thereto in order to understand the FTC's activities and their potential impact on the Chamber's members.

Federal law requires that the FTC produce these records within twenty (20) business days or, in unusual circumstances, within thirty (30) business days. *See* 5 U.S.C. § 552(a)(6)(A)-(B); *see also* 16 C.F.R. § 4.11(a)(1)(ii). If the Chamber's request is denied in whole or in part, please justify all denials by reference to specific exemptions under the FOIA.

If you have any questions about this request, please contact me by email. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Heather".

Sean Heather
Senior Vice President
International Regulatory Affairs & Antitrust
U.S. Chamber of Commerce
(202) 463-5368
SHeather@USChamber.com

EXHIBIT B



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 10, 2022

Mary Carter
US Chamber of Commerce
1615 H Street, NW
Washington, DC 20062

Re: FOIA-2022-00324

Dear Ms. Carter:

This is in response to your request dated December 2, 2021 under the Freedom of Information Act seeking access to:

All records related to counting votes of Former Commissioners for a period of time after their departure from the Commission. This request includes, but is not limited to, any legal analysis performed or received by the FTC; any and all internal guidance or rules governing voting procedures; how long the agency counts votes following a Commissioner's departure and what actions can extend or reopen a motion to vote; the history of this practice; any communications between the FTC and the White House; and any press statements or drafts of press statements. The timeframe for this request is November 23, 2020 (the start of the presidential transition period) to the present. The term "records" as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

Your request did not indicate an agreement to pay any fees associated with the processing of your request. In the future, please provide a fee agreement to facilitate the processing of your request.

Your request creates an undue burden on the agency because it creates an unreasonable hardship for the agency to process, even if the specificity requirements are met. *See Nat'l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 147 (D.D.C. 2013) (quoting *Am. Fed'n of Gov't Emps., Local 2782 v. U.S. Dept. of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990)). The courts have opined that even if a request reasonably describes the records being sought, the request can still be considered improper if the request is "so broad as to impose an unreasonable burden upon the agency." *Id.*

Overbroad and unreasonably burdensome requests are considered invalid because "FOIA was not intended to reduce government agencies to full-time investigators on behalf of

requesters.” *Ass’n Archives & Research Ctr., Inc. v. CIA*, 720 F. Supp. 217, 219 (D.D.C. 1989). Even if the request meets the FTC FOIA “precise description” requirement, it can still be unduly burdensome on the agency to process. Therefore, we are denying your request.

If you have any questions about the way we are handling your request or about the FOIA regulations or procedures, please contact Anthony Ellis at rellis@ftc.gov. If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, or via email at FOIAAppeal@ftc.gov, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at 202-326-3355 or via e-mail at rgold@ftc.gov; or from the Office of Government Information Services via email at ogis@nara.gov, via fax at 202-741-5769, or via mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740. Please note that the FOIA Public Liaison’s role relates to comments, questions or concerns that a FOIA Requester may have with or about the FOIA Response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dione J. Stearns".

Dione J. Stearns
Assistant General Counsel



U.S. Chamber of Commerce

January 6, 2022

VIA EMAIL (FOIAAppeal@ftc.gov)

Freedom of Information Act Appeal
Office of the General Counsel, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Freedom of Information Act Appeal in Case No. FOIA-2022-00322

To Whom it May Concern:

Pursuant to 16 C.F.R. § 4.11, the Chamber of Commerce of the United States of America (“Chamber”) appeals the determination of Assistant General Counsel Dione Stearns (dated January 3, 2022) regarding the Freedom of Information Act (“FOIA”) request identified above (dated December 2, 2021). The Chamber requested information that the Commission has no basis to withhold, that other agencies have produced in response to similar requests, and that is similar in kind to material the Commission used to make public, apparently in response to FOIA requests. The FTC should promptly reverse this determination and release the requested material.

As explained further below, the Chamber sought release of the Commission’s internal rules and operating procedures. The Commission is a public body doing the public’s business and FOIA gives the public a right to know what rules and procedures govern the Commission’s work. The summary denial of the Chamber’s request ignores all that and, indeed, hardly even attempts to justify the cloak of secrecy currently concealing the Commission’s operations. We trust that you will remedy this baseless denial and direct a prompt disclosure of the secret rules governing the Commission’s hidden deliberations. If you do not, a court surely will.

In the Chamber’s December 2, 2021 FOIA request, the Chamber sought the following: “Full and complete copies of (a) the ‘Office of the Secretary Procedures Manual’ dated April 7, 1994, and any newer version, including updates, revisions, or successor or superseding documents; and (b) the document containing the ‘Policy with Respect to Counting Votes of Departing and Arriving Commissioners’ dated March 27, 1984, and any newer version, including updates or revisions, or successor or superseding documents, available at <https://www.ftc.gov/about-ftc/foia/frequently-requested-records/commission-voting-policy>.” December 2, 2021 FOIA Request, Ex. A. As is clear on the face of the request, the Chamber is not seeking documents memorializing internal deliberations about operating and voting procedures at the Commission. The Chamber is seeking only the “full and complete” Manual, any finalized “updates, revisions, or successor or superseding documents,” and the “Policy with Respect to Counting Votes of Departing and Arriving Commissioners’ dated March 27, 1984, and any newer version”—*i.e.*, the Commission’s rules and procedures that are currently in effect.

In a January 3, 2022 response, Assistant General Counsel Stearns directed the Chamber to a previous production of the Commission providing (1) what appears to be an excerpt from the Commission's 1997 Office of the Secretary Procedures Manual, and (2) a 1984 document concerning voting procedures for departing and arriving Commissioners. Assistant General Counsel Stearns denied the Chamber's request for a complete copy of the Manual and the 1984 document—along with any “updates, revisions, or successor or superseding documents”—on the ground that “[t]he responsive records contain staff analyses, opinions, and recommendations” that are “deliberative and pre-decisional and are an integral part of the agency's decision-making process” and thus “exempt from disclosure under FOIA.” January 3, 2022 Stearns Letter, Ex. B.

Without waiving any other bases for disclosure of the material that the Chamber requested, at least three reasons compel reversal. *First*, the Commission's voting procedures represent final decisions about what procedures the Commission will use to do business. By definition, the Commission's operating procedures cannot *themselves* be pre-decisional or deliberative—an obvious point that other agencies understand. *Second*, to the extent that documents memorializing the Commission's current operating procedures *contain* deliberative information, the Commission must redact that information—and only that information. It cannot simply withhold documents in full. *Finally*, FOIA imposes an independent obligation on the Commission to “make available to the public” its “statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available,” “rules of procedure,” “substantive rules of general applicability,” and “statements of general policy.” 5 U.S.C. § 552(a)(1). The Commission cannot withhold material that FOIA *affirmatively requires* the Commission to publish—a legal requirement the Commission, unlike other agencies, has apparently decided to ignore.

I. Final Policies Are Neither Pre-Decisional Nor Deliberative.

FOIA establishes a “strong presumption in favor of disclosure” subject only to a few “narrowly construed” statutory exemptions. *Multi Ag Media LLC v. Dep't of Agriculture*, 515 F.3d 1224, 1227 (D.C. Cir. 2008). The only exemption cited in Assistant General Counsel Stearns's letter is FOIA Exemption 5, which is limited to information that is both pre-decisional and deliberative. *Jordan v. DOJ*, 591 F.2d 753, 774 (D.C. Cir. 1978) (en banc). For a document to be pre-decisional, it must be “actually antecedent to the adoption of an agency policy.” *Id.* at 774. For a document to be deliberative, it must be a “direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters.” *Vaughn v. Rosen*, 523 F.2d 1136, 1144 (D.C. Cir. 1975). Material that fails *either* of these requirements must be disclosed. The documents that the Commission has refused to disclose fail *both*.

None of the requested documents are pre-decisional—all are final policies of the Commission and “final policy determinations must be made available to the public.” *Aug v. National Railroad Passenger Corporation*, 425 F. Supp. 946, 950-51 (D.D.C. 1976). Whether a

document is pre-decisional depends on “whether it was generated before the adoption of an agency policy.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980); *see also, e.g., Jordan*, 591 F.2d at 774 (“The privilege protects only communications ... that are actually [a]ntecedent to the adoption of an agency policy.”); *Aug*, 425 F. Supp. at 950 (“Once a recommendation has been adopted ... it becomes ... ‘policy,’ loses its exempt status and renders exemption five inapplicable.”). None of the documents at issue—the Commission’s complete Office of the Secretary Procedures Manual, any final updates or revisions to that Manual, the document containing the Policy with Respect to Counting Votes of Departing and Arriving Commissioners, and any final updates or revisions to that Policy—was “generated before the adoption of an agency policy.” *Coastal States Gas Corp.*, 617 F.2d at 866. Each of these documents is *itself* “an agency policy”; indeed, one document is titled the Commission’s “Policy” with respect to counting Zombie votes. These documents represent *decisions*, not their antecedents. They must accordingly be disclosed.

For much the same reasons, none of these documents are deliberative. Documents are “deliberative” only if they “reflect[] the give-and-take of the consultative process,” such as with “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Coastal States*, 617 F.2d at 866. Again, the documents requested by the Chamber are not documents that memorialize internal Commission debates about what the Commission’s procedures *should be*; they are documents memorializing the Commission’s procedures as they *actually are*. The procedures in effect at the Commission today have nothing to do with the Commission’s internal give-and-take—they are the current policy of the agency, and, again, “final policy determinations must be made available to the public.” *Aug*, 425 F. Supp. at 950-51. For that reason, too, the Commission’s procedures must be disclosed.

Other agencies have previously understood and complied with their obligation to produce their operating rules and procedures upon request, as, it appears, has the Commission itself. For example, on March 17, 2017, in response to a FOIA request for the Commission’s “Agency Handbook,” the Federal Communications Commission (“FCC”) produced a complete copy of the FCC’s “Guide to the Agenda Process” (December 2012). *See* March 8, 2017 FCC FOIA Production, Ex. C. Other agencies simply post their internal operating procedures online. *See* Justice Manual, U.S. Department of Justice, available at <https://www.justice.gov/jm/justice-manual>; Enforcement Manual, Commodity Futures Trading Commission Division of Enforcement, available at [https://www.cftc.gov/media/1966/The CFTC Division of Enforcement - Enforcement Manual/download](https://www.cftc.gov/media/1966/The%20CFTC%20Division%20of%20Enforcement%20-%20Enforcement%20Manual/download). And the Commission itself used to include—on its public FOIA page—a copy of the “FTC Operating Manual,” which was apparently a document “prepared by members of the Commission Staff in 1971 to provide guidance regarding general FTC practice and procedures.” FTC Operating Manual, Federal Trade Commission Frequently Requested Records, available at <https://www.ftc.gov/about-ftc/foia/frequently-requested-records/ftc-operating-manual>. The Commission has withdrawn that document because portions of it “did not

accurately reflect Commission practice and other parts have been incorporated elsewhere on FTC.gov,” *id.*, but its initial production of the document confirms that the Commission knows its current internal rules and procedures should be furnished to the public. Yet here, the Commission has failed to produce that material—with hardly any explanation why.

II. The Commission Cannot Categorically Withhold Documents That Contain Deliberative, Pre-Decisional Material.

Even if the Commission’s final procedures (somehow) *contain* pre-decisional, deliberative material, the Commission still cannot withhold them *entirely*. Agencies cannot justify broad withholdings with a “sweeping and conclusory citation of an exemption”; rather, “when an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.” *Mead Data Cent., Inc. v. Dep’t of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1997). Hence, “non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions.” *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1116 (D.C. Cir. 2007); *see also, e.g., Valfells v. CIA*, 717 F. Supp. 2d 110, 120 (D.D.C. 2010) (explaining that the agency must provide “a ‘detailed justification’ and not just ‘conclusory statements’ to demonstrate that all reasonably segregable information has been released”). The Commission’s summary invocation of Exemption 5 falls far short of this requirement.

And worse than being merely cursory, the Commission’s denial of the Chamber’s request appears to *admit* that the Commission is withholding non-deliberative material. Assistant General Counsel Stearns claims only that the “responsive records *contain* staff analyses, opinions, and recommendations.” January 3, 2022 Stearns Letter, Ex. B (emphasis added). It is hard to imagine that *every* document memorializing the Commission’s current operating procedures and voting policies “contain[s] staff analyses, opinions, and recommendations.” But even if that is true, the Commission is *still* required to disclose all non-deliberative “portions” of those documents, *Sussman*, 494 F.3d at 1116—as it has already done, to an extent, by releasing select portions of them. For that reason, too, the Commission’s refusal to disclose its procedural manuals should be reversed.

III. The Commission Cannot Withhold Material that FOIA Requires Be Affirmatively Published.

Finally, the Commission cannot withhold information that it has an affirmative legal obligation to publish. FOIA requires that federal agencies “separately state and currently publish in the Federal Register” certain kinds of information enumerated “for the guidance of the public.” 5 U.S.C. § 552(a)(1). This provision requires, among other things, that agencies publish “statements of the general course and method by which its functions are channeled and determined,

including the nature and requirements of all formal and informal procedures available,” “rules of procedure,” “substantive rules of general applicability,” and “statements of general policy.” 5 U.S.C. § 552(a)(1). The FTC’s operating procedures and internal voting rules clearly fall within these requirements and should therefore *already* be public. The Commission has never explained why they are not.

In addition, FOIA requires the Commission to disclose to the public any materials it has not published in accordance with the provision detailed above. Specifically, it requires agencies to “make available for public inspection in an electronic format ... those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register” and “administrative staff manuals and instructions to staff that affect a member of the public.” 5 U.S.C. § 552(a)(2). The Commission has not even *attempted* to explain how the documents the Chamber seeks—again, a copy of the “Office of the Secretary Procedures Manual” dated April 7, 1994, any updated or superseding versions of that Manual, the document containing the “Policy with Respect to Counting Votes of Departing and Arriving Commissioners” dated March 27, 1984, and any updated or superseding versions of that Policy—could be *anything other* than “statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register.” 5 U.S.C. § 552(a)(2). For this reason, too, the decision of Assistant General Counsel Stearns should be reversed and the requested documents promptly disclosed.

* * *

For all of these reasons, the public has a legal right to know what rules and procedures govern the Commission’s work. The summary denial of the Chamber’s request is baseless stonewalling. We trust you will remedy that error and direct the transparency that the law requires.

Sincerely,

A handwritten signature in black ink that reads "Daryl Joseffer". The signature is written in a cursive, flowing style.

Daryl Joseffer
Executive Vice President and Chief Counsel
U.S. Chamber Litigation Center
U.S. Chamber of Commerce
1615 H Street, NW
Washington, DC 20062

Phone: 202-463-5495
Fax: 202-463-5346
DJoseffer@USChamber.com

EXHIBIT A



December 2, 2021

VIA EMAIL: FOIA@FTC.GOV

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
Washington, DC 20580

Re: Freedom of Information Act Request; Expedited Treatment Requested

To Whom it May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 16 C.F.R. § 4.11, the U.S. Chamber of Commerce (“the Chamber”) hereby requests the following information:

Full and complete copies of (a) the “Office of the Secretary Procedures Manual” dated April 7, 1994, and any newer version, including updates, revisions, or successor or superseding documents; and (b) the document containing the “Policy with Respect to Counting Votes of Departing and Arriving Commissioners” dated March 27, 1984, and any newer version, including updates or revisions, or successor or superseding documents, *available at* <https://www.ftc.gov/about-ftc/foia/frequently-requested-records/commission-voting-policy>.

We further request that the FOIA officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted.

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, I request that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

The Chamber requests a fee waiver because disclosure of this information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government. The Chamber is a non-profit organization organized under Section 501(c)(6) of the Internal Revenue Code. Disclosure of this information is not primarily in the Chamber’s commercial interest because it seeks to use this information to educate itself and the public about the FTC’s ongoing activities. *See* 16 C.F.R. § 4.8(e)(2). The FTC’s activities affect a broad swath of the United States economy and business entities across the country—many of whom are members of the Chamber. The disclosure of these documents will allow the Chamber, its members, and the public to better understand the FTC’s recent and future activities and the potential impact of these actions. If this request for a fee waiver is denied, the Chamber is willing to pay fees up to \$2,500.

The Chamber also requests expedited treatment of this request because the Chamber's mission involves disseminating information—to both its membership and the public—regarding economic issues in the United States, especially as they relate to the Federal Government. The FTC's actions impact the Chamber's members and other members of the public. *See* 16 C.F.R. § 4.11(a)(1)(G). The Chamber must be able to provide information regarding the FTC's activities to its members given their significant impact—so its members may comply with new regulations and policies, so they may protect their rights, and so they may order their own affairs. The impact of these actions is far-reaching, requiring the urgent release of documents and information related thereto in order to understand the FTC's activities and their potential impact on the Chamber's members.

Federal law requires that the FTC produce these records within twenty (20) business days or, in unusual circumstances, within thirty (30) business days. *See* 5 U.S.C. § 552(a)(6)(A)-(B); *see also* 16 C.F.R. § 4.11(a)(1)(ii). If the Chamber's request is denied in whole or in part, please justify all denials by reference to specific exemptions under the FOIA.

If you have any questions about this request, please contact me by email. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Heather". The signature is fluid and cursive, with the first name "Sean" and last name "Heather" clearly distinguishable.

Sean Heather
Senior Vice President
International Regulatory Affairs & Antitrust
U.S. Chamber of Commerce
(202) 463-5368
SHeather@USChamber.com

EXHIBIT B



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 3, 2021

Mary Carter
US Chamber of Commerce
1615 H. Street, NW
Washington, DC 20062

Re: FOIA-2022-00322

Dear Ms. Carter:

This is in response to your request dated December 2, 2021, under the Freedom of Information Act seeking access to full and complete copies of (a) the Office of the Secretary Procedures Manual dated April 7, 1994, and any newer version, including updates, revisions, or successor or superseding documents; and (b) the document containing the Policy with Respect to Counting Votes of Departing and Arriving Commissioners dated March 27, 1984, and any newer version, including updates or revisions, or successor or superseding documents. In accordance with the FOIA and agency policy, we have searched our records on December 7, 2021.

The Commission's fee regulations specify that fees less than \$25 will be waived. *See* 16 C.F.R. § 4.8(b)(4). Because the fees associated with the processing of your request did not exceed \$25, we have processed your request free of charge.

Some of the records relating to your request are on the Federal Trade Commission's (FTC) public record. You may access the records using the link you provided in your initial request letter. A formal Freedom of Information Act request is not necessary to obtain this material. Additionally, we are withholding all superseding, revised, or new records relating to the Office of Secretary Procedures Manual in full under FOIA Exemption 5. The responsive records contain staff analyses, opinions, and recommendations. Such records are deliberative and pre-decisional and are an integral part of the agency's decision-making process. They are exempt from disclosure under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975).

If you have any questions about the way we handled your request or about the FOIA regulations or procedures, please contact Anthony Ellis at rellis@ftc.gov. If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, or via email at FOIAAppeal@ftc.gov, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at 202-326-3355 or via e-mail at rgold@ftc.gov; or from the Office of Government Information Services via email at ogis@nara.gov, via fax at 202-741-5769, or via mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740. Please note that the FOIA Public Liaison's role relates to comments, questions or concerns that a FOIA Requester may have with or about the FOIA Response. The FOIA Public Liaison's role does not relate to taking action in matters of private controversy nor can he resolve individual complaints.

Sincerely,

A handwritten signature in black ink, appearing to read "Dione J. Stearns". The signature is fluid and cursive, with the first name "Dione" and last name "Stearns" clearly distinguishable.

Dione J. Stearns
Assistant General Counsel

EXHIBIT C



Federal Communications Commission
Washington, D.C. 20554

March 8, 2017

Re: FOIA Control No. 2017-000292

This letter responds to your Freedom of Information Act (FOIA) request for an "electronic/digital copy of the "Agency Handbook." Your request has been assigned FOIA Control No. 17-000292.

Pursuant to section 0.461(g)(1)(ii) of the Commission's rules, the date for responding to your request was extended from February 21, 2017 to March 8, 2017, due to a need to consult with multiple components of the Commission having substantial interest in the request, and you agreed to the extension.

The Office of the Managing Director conducted a search and, upon further clarification from you, determined the document sought is the Commission's "Agenda" handbook entitled "Guide to the Agenda Process," and the document is attached.

We are required by both the FOIA and the Commission's own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought-after information. To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.

Pursuant to section 0.466(a)(8) of the Commission's rules, you have been classified for fee purposes as category (3), "all other requesters." As an "all other requester," the Commission assesses charges to recover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request; however, you are entitled to be furnished with the first 100 pages of reproduction and the first two hours of search time without charge under section 0.470(a)(3)(i) of the Commission's rules. The production did not involve more than 100 pages of duplication and took less than two hours of search time. Therefore, you will not be charged any fees.

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must

be received by the Commission within 90 calendar days of the date of this letter. You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director, Performance
Evaluation and Records Management
445 12th St SW, Washington, DC 20554
202-418-0440
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

If you have any questions, please contact Marlene H. Dortch 202-418-0300.

Sincerely,



Marlene H. Dortch
Secretary
Federal Communications Commission

Enclosures
cc: FCC FOIA Office



Federal Communications Commission
Office of Managing Director
Office of the Secretary

BUREAU AND OFFICE
GUIDE TO THE
AGENDA PROCESS
Meeting and Circulation Items

December 2012



**Federal Communications Commission
Washington, D.C. 20554**

The following guide provides an outline of the Commission's meeting and circulation agenda process. In addition to an abridged version of the Agenda Handbook, we have also provided the check lists used by bureau and office staff for preparing items for review by the Commission. This brief but thorough guide will quickly familiarize you with the Commission's agenda decision-making process.

We hope you find this guide to be a useful resource. Should you have questions regarding the agenda process or need our assistance in any way, please do not hesitate to contact me directly at 418-1449 or my Associate Secretary for Agenda and Publications, Cecilia Sigmund at 418-1588.

Marlene H. Dortch
Secretary

Federal Communications Commission

Office of the Secretary

Office of Managing Director

GUIDE TO THE AGENDA PROCESS

Meeting and Circulation Items

TABLE OF CONTENTS

I. Coordination, Distribution and Edits	5
A. AGENDA MEETING ITEM	5
Table 1: Chronological Steps for Processing an Open Meeting Item.....	5
1. Open Meeting (Draft) Item Coordination	6
2. Open Meeting Item Distribution	6
Table 2: Distribution List (Meeting).....	7
3. Closed Meeting Distribution.....	7
4. Pre-adoption Editing Process and Redistribution of Open Meeting Items	7
Table 3: Redistribution List (Meeting)	8
5. Withdrawn Open Meeting Items.....	8
6. Items Changed from Open Meeting to Circulation.....	8
7. Other Required Preparation for an Open Meeting.....	9
a. Sunshine Summary and Notice	9
b. Presentations and Press Releases	10
c. Name Cards	10
8. Meeting Edits	10
d. Non-Substantive Edits	10
e. Substantive Edits	11
B. CIRCULATION ITEMS.....	11
9. Pre-Circulation Distribution.....	11
10. Coordination and Distribution	11
Table 4: Distribution List (Circulation)	12
11. WIP (Work in Progress) List	12
12. Time Sensitive Circulation Items.....	12
13. Emergency Circulation Items	13
14. Editing Circulation Items.....	13
f. Critical Edits	13
Table 5: Procedures for a Revised Circulation Item with Critical Edits.....	14
g. Substantive but not Critical Edits	15
h. Non-substantive Edits	15
15. Items Changed from Circulation to Meeting	15
C. SPECIAL ITEMS AND MEETINGS	15
16. Executive Circulates	15
17. Reorganization Items	16

18. By Direction Letters.....	16
19. Federal-State Joint Board.....	16
20. En Banc Hearings	17
II. Voting, Adoption and the Bureau Agenda Release Form	17
D. COMMISSIONERS' VOTE CATEGORIES	17
Table 6: Types of Commissioners' Vote	18
E. COMMISSIONERS' STATEMENT(s)	18
Table 7: Commissioners' Statement Types	18
F. MEETING ITEMS	19
21. Voting of Meeting Items	19
22. Adopted Version of Meeting Item	19
G. CIRCULATION ITEMS.....	20
23. Voting of Circulation Items	20
i. Quorum, Must-Vote Deadline, and Extensions.....	20
24. Adoption of Circulation Items	22
j. Vote Retraction of an Adopted Circulate Item	22
H. BUREAU AGENDA RELEASE FORM (BARF) Approval.....	23
Table 8: BARF Approval Process for Non-Substantive Edits.....	23
Table 9: BARF Approval Process for Critical or Substantive Edits.....	24
I. TARGET RELEASE DATES.....	25

Appendices

Appendix 1:	Form A-491, Approval for Distribution of Meeting Agenda Item or Request for Expedited Action of Agenda Item (Green Sheet)
Appendix 2:	Blue Cover Sheet, Agenda Meeting Item
Appendix 3:	Yellow Cover Sheet, Highly Sensitive/Restricted
Appendix 4:	Form A-87, Certificate to Close Meeting
Appendix 5:	Form A-377, Draft Agenda Item Cover Sheet
Appendix 6:	Sunshine Notice (Example)
Appendix 7:	Form A-83, Request for Special Action
Appendix 8:	Form A-501, Bureau Agenda Release Form
Appendix 9:	Green Cover Sheet, Pre-Circulation Item
Appendix 10:	Pink Cover Sheet, Agenda Item Circulation
Appendix 11:	Form A-82-P, Request for Special Action by Circulation

List of Tables (see Table of Contents for page numbers)

Table 1:	Chronological Steps for Processing an Open Meeting Item
Table 2:	Distribution List (Meeting)
Table 3:	Redistribution List (Meeting)
Table 4:	Distribution List (Circulation)
Table 5:	Procedures for a Revised Circulation Item with Critical Edits
Table 6:	Types of Commissioners' Vote
Table 7:	Commissioners' Statement Types
Table 8:	BARF Approval Process for Non-Substantive Edits
Table 9:	BARF Approval Process for Critical or Substantive Edits

I. COORDINATION, DISTRIBUTION AND EDITS

Coordination, distribution, and edit procedures for agenda meeting and circulation items differ and are discussed below.

A. AGENDA MEETING ITEM

The table below summarizes the steps for preparing a meeting item for the monthly Open Agenda Meeting.

Table 1: Chronological Steps for Processing an Open Meeting Item

Timeline (Prior to Open Meeting) - Responsible Party	Actions
5 weeks – Bureau/Office (B/O)	<ol style="list-style-type: none"> 1. If coordination or notation is required for an item, submit it to the appropriate B/O by this date. Items may not be "noted with edits." 2. Submit a copy of an item to Office of General Counsel (OGC), Ad Law Division, and Office of Communications Business Opportunities (OCBO).
3½ - 5 weeks Bureau/Office and Office of the Chairman	Submit to Chairman's Office Form A-491, "Approval for Distribution of Meeting Agenda Item or Request for Expedited Action of Agenda Item," for approval.
21 days – Bureau/Office "White Copy"	<ol style="list-style-type: none"> 1. Distribute item as outlined in Table 2, Distribution List (Meeting). 2. Give copy of approved Form A-491 to Chairman's Administrative Officer. 3. Deliver agenda item with approved original copy of Form A-491 and sunshine summary to Office of the Secretary's Agenda and Publications Group (TW-B204).
1 week – Office of the Secretary/Agenda and Publications Group	Release the Sunshine Notice.
1 week – Bureau/Office	Distribute draft presentations and press release(s) to Chairman's Legal Advisors. Coordinate with the Office of Media Relations (OMR).
3 business days – Bureau/Office	OMR prepares all name cards. Email (Meribeth-McCarriek@fec.gov): (1) the name, organization, and title for all the individuals participating in presenting the item(s) and (2) indicate the need for Microsoft Power Point presentation (if applicable).
2 business days – Bureau/Office (if item requires edits)	<ol style="list-style-type: none"> 1. Distribute revised item as outlined in Table 3, Redistribution List (Meeting). 2. Distribute draft press releases to Commissioners' Legal Advisors.
1 business day – Bureau/Office , Chairman's Chief of Staff , and Office of Media Relations	<ol style="list-style-type: none"> 1. Presenters and others designated by B/O Chiefs attend meeting with Chairman's Chief of Staff and OMR representatives. 2. B/O distributes by 5 p.m., a finalized item to all Commissioners' offices, OGC, OCBO and the Office of the Secretary's Agenda and Publications Group (see Table 3, Redistribution List (Meeting)).

1. Open Meeting (Draft) Item Coordination

Bureau/Office:

- Fully coordinates Agenda items with all applicable Bureaus/Offices and the Office of General Counsel (OGC) before circulating them to the Commissioners. Items should be noted where appropriate, but not "noted with edits" (i.e., signed by the coordinating Bureau/Office Chief with a stipulation to make edits to the item).
- To allow for full coordination of draft items, delivers items not less than five weeks before the meeting (or in any event, not less than two weeks before distribution to the Commissioners and further in advance if possible) to OGC, Office of Communications Business Opportunities (OCBO) and any other coordinating Bureau or Office.
- Promptly delivers to OGC and other coordinating Bureaus/Offices subsequent revised drafts.
- If an item involves substantial legal issues, gives OGC a draft as soon as the item is in reasonably firm shape, and lets OGC know what it believes are the key legal issues in the item.

2. Open Meeting Item Distribution

Bureau/Office:

- Before distributing the item, completes a Form A-491, "Approval for Distribution of Meeting Agenda Items or Request for Expedited Action on Agenda Items" (see **Appendix 1**) and submits to the Chairman's office for approval.
- Submits the approved original form to the Office of the Secretary's Agenda and Publications Group along with the agenda item, and provides a copy of the form to the Chairman's Administrative Officer.
- Distributes the item (which should include prior edits) to the Chairman, Commissioners, and Bureaus/Offices at least 21 days prior to the Commission meeting. A schedule of Commission Open Meeting and Distribution Dates are on the FCC Intranet at <http://intranet.fcc.gov/omd/osec/com.html>.
- Distributes all copies of the item using the blue-colored "Agenda Meeting Item" cover sheet (see **Appendix 2**).
- Distributes all copies of a highly sensitive item with the yellow-colored "Highly Sensitive" cover sheet (see **Appendix 3**), as well as the blue-colored Agenda Meeting Item cover sheet. Place the yellow-colored cover sheet on top.
- Hand-delivers paper copies of the item with appropriate cover sheet(s) to distribution list 21 days before the Commission meeting. If the deadline for distribution falls on a holiday, distribute on the preceding workday. The following table lists the recipients of items and the number of copies they should receive:

Table 2: Distribution List (Meeting)

Bureau/Office	No. of Copies	Room No.
Chairman	1	8-B201
Commissioners	1 (each)	8-A302, 8-C302
Office of General Counsel (Ad Law Division Agenda Box)	1	8- A623
Agenda and Publications Group, Office of the Secretary	1 + Orig. Form A-491 and Sunshine Summary	TW-B204
Office of Communications Business Opportunities	1	4-A628

- Distributes electronic copies of the agenda item to the remaining Bureaus/Offices by e-mailing the item to the FCCMEET group.

3. Closed Meeting Distribution

Bureau/Office:

- When the Commissioners will consider an item in a closed meeting, complete Form A-87, "Certificate to Close Meeting" (see **Appendix 4**).
- Hand-delivers paper copies of the item and the Form only to the expected attendees and the Office of the Secretary's Agenda and Publications Group.

Commissioners:

- Record their vote on the completed Form.
- Contact the Office of the Secretary's Agenda and Publications Group to pickup the Form.

Office of the Secretary's Agenda and Publications Group:

- Records the votes in eCLAS and provides Bureau/Office with release information.

4. Pre-adoption Editing Process and Redistribution of Open Meeting Items

Bureau/Office:

- After the initial distribution to Commissioners, places a Draft Agenda Item cover sheet (see **Appendix 5**) on the item every time it is revised and redistributed.

- Throughout the editing process, marks all revised drafts with the date and time. In addition, redlines all revised drafts with any substantive edits attributed to the originating office. Submits both clean and redlined copies of revised drafts along with a Draft Agenda Item cover sheet and redistributes copies as outlined in **Table 3, Redistribution List (Meeting)**.
- Provides to OGC, OCBO, and the Office of the Secretary's Agenda and Publications Group any revised drafts distributed to the Commissioners.
- Presents finalized items to all Commissioners' offices, OGC, OCBO and the Office of the Secretary's Agenda and Publications Group by 5:00 p.m. on the day before the agenda meeting.

Commissioners:

- Work together with the originating Bureau/Office and OGC to finalize all edits prior to the meeting. During this period, there should be an ongoing exchange of ideas and edits, which may include not only official distribution of items but also the exchange of particular sections of an item that are under discussion.

Table 3: Redistribution List (Meeting)

Bureau/Office	No. of Copies	Room No.
Chairman	1	8-B201
Commissioners	1 (each)	8-A302, 8-C302
Office of General Counsel (Ad Law Division Agenda Box)	1	8-A623
Agenda and Publications Group, Office of the Secretary	1	TW-B204
Office of Communications Business Opportunities	1	4-A628

5. Withdrawn Open Meeting Items

- When a meeting item is withdrawn, the Bureau/Office is responsible for notifying the Office of the Secretary's Agenda and Publications Group, the Chairman's Administrative Officer, OGC/Ad Law Division, and the Commissioners' offices, as well as other Bureaus/Offices that had received copies of the withdrawn item.

6. Items Changed from Open Meeting to Circulation

- Bureau/Office will process meeting items changed from meeting to circulate status according to Circulation procedures (see below, Circulation Items).

7. Other Required Preparation for an Open Meeting

a. Sunshine Summary and Notice

Bureau/Office:

- Prepares a sunshine summary for inclusion in the Sunshine Notice published for every Commission meeting. A sunshine summary should be decision neutral, i.e., not reveal the staff proposal.
- Remembers to include docket and/or rule making numbers in the title, if applicable.
- Delivers to the Office of the Secretary/Agenda and Publications Group the summary along with the agenda item and Form A-491, Approval for Distribution of Meeting Agenda Item or Request for Expedited Action of Agenda Items.

Office of the Secretary:

- Prepares the Sunshine Notice (see **Appendix 6**) and, upon approval of the Chairman's Office and in accordance with the Government in the Sunshine Act, releases it to the public seven calendar days in advance of a scheduled meeting.
- Releases the Sunshine Notice at a time designated by the Chairman's Office, usually 5 p.m. As consistent with the Government in the Sunshine Act, the identity of upcoming meeting items is not for public information until the release of the Sunshine Notice.
- Publishes all Sunshine Notices in the Federal Register.
- The Secretary prepares the Agenda meeting script for Chairman's Office approval after release of the Sunshine Notice.

1. Adding a Meeting Item after the Release of the Sunshine Notice

To add an additional item to the open meeting agenda, after the release of the Sunshine Notice, each Commissioner must vote to approve the addition on Form A-83, Request for Special Action (see **Appendix 7**).

Office of the Secretary:

- Prepares Form A-83 and provides a copy of the form to each Commissioner's Senior Legal Advisor.
- Upon receipt of Form A-83 from each Commissioner's office, enters the vote information into eCLAS.
- To add the approved item, prepares the appropriate Sunshine Notice and releases it to the public.

2. Deleting a Meeting Item after the Release of the Sunshine Notice

After the release of the Sunshine Notice, only the Chairman's office may delete an item from the open meeting agenda. Approval from the other Commissioners is not required.

Office of the Secretary:

- At the direction of the Chairman's office, prepares the appropriate Sunshine Notice and releases it to the public.

b. Presentations and Press Releases

Bureau/Office:

- Coordinates preparation of press releases for agenda items with the Office of Media Relations.
- Submits drafts of all presentations and press releases to the Chairman's Legal Advisor handling the agenda item at least one week before the agenda meeting.
- Circulates a draft press release for an item to the other Commissioners' Legal Advisors at least two business days prior to the agenda meeting.

c. Name Cards

Bureau/Office:

- The Office of Media Relations prepares name cards for all Commission meeting Bureau/Office presenters. Three business days before the meeting, submit for each agenda item the following information to the Office of Media Relations ([Meribeth McCarriek@fec.gov](mailto:MeribethMcCarriek@fec.gov)):
- The name, organization, and title for all the individuals participating in presenting the item; and indicate the need for a Microsoft Power Point presentation (if applicable).

8. Meeting Edits

d. Non-Substantive Edits

Bureau/Office:

- Makes non-substantive edits, (e.g., correcting typographical errors, grammatical, and spelling errors or updating citations) without re-distributing an item.

- After adoption and before releasing the item, the Bureau/Office Chief or the designee certifies on the Form A-501, Bureau Agenda Release Form (see **Appendix 8**) that there are no substantive differences between the adopted and final version of an item, before the Form and item are delivered to the OGC/Ad Law Division for final review and approval. For detailed information, see Section H, Bureau Agenda Release Form Approval.

e. Substantive Edits

Bureau/Office and Commissioners:

- Should avoid post-adoption edits to the greatest extent possible, but not at the expense of the goal of generating a high quality work product and ensuring that all items reflect as much as possible the collective wisdom and experience of all of the Commissioners embodied in the decision as voted.
- After adoption and before releasing the item, the originating Bureau/Office should receive approval on the Bureau Agenda Release Form by each non-dissenting Commissioner or the designee for all items that involve substantive differences between the adopted and final versions. Approval of any dissenting Commissioner is not required; if he or she dissents in part, approval is required for the portions from which he or she did not dissent. For detailed information, see Section H, Bureau Agenda Release Form Approval.

B. CIRCULATION ITEMS

9. Pre-Circulation Distribution

Bureau/Office:

- Submits all draft circulate items (Pre-Circulate Items) to the Chairman's office using the green-colored "Pre-Circulate Item" cover sheet (**Appendix 9**)
- Includes the date of delivery on the cover sheet (see bottom of form).

10. Coordination and Distribution

Bureau/Office:

- When notation of an item is required, allow at least 2 weeks for OGC or other relevant Bureaus/Offices to review and note the item. Items should not be "noted with edits."
- Distributes all copies of circulation items with the pink-colored Agenda Item Circulation cover sheet (see **Appendix 10**).
- Distributes all market-sensitive items with the yellow-colored Highly Sensitive/Restricted cover sheet (see **Appendix 3**), as well as the pink-colored Agenda Item Circulation cover sheet (place yellow cover sheet on top).

- Distributes paper and electronic copies of a circulation item as follows:

(1) Hand-delivers paper copies to the following:

Table 4: Distribution List (Circulation)

Bureau/Office	No. of Copies	Room No.
Chairman	4	8-B201
Office of General Counsel (Ad Law Division Agenda Box)	2	8-A623
Agenda and Publications Group, Office of the Secretary	1 (per CLAS no.)	TW-B204
Office of Communications Business Opportunities	1	4-A628

(2) Distributes electronic copies of the agenda item to the remaining Bureaus/Offices by e-mailing the item to the FCCCIRU group.

Chairman's Office:

- Distributes a copy of all approved circulate items to each Commissioner's office for voting in eCLAS.

11. WIP (Work in Progress) List

Bureau/Office:

- When an item requires extensive work and/or in response to discussions with the Commissioners' staff, the Chairman's office may place a circulation item in WIP status. Placing an item on the WIP list removes it from circulation. When the item is ready for circulation again, the Bureau/Office re-circulates it with the original CLAS number.

Office of the Chairman, Administrative Officer:

- Updates the circulation item to WIP status in eCLAS and notifies the originating Bureau/Offices and the Agenda and Publications Group.

12. Time Sensitive Circulation Items

Bureau/Office:

- Indicates in the Cover Memo if an item has a deadline (e.g. statutory deadline, court of appeals filing deadline, etc.) and follow up with a phone call or e-mail to the relevant assistant in each Commissioner's office explaining the reason for the deadline. If a routine matter turns into a rush item or rushing an item becomes unnecessary, notify the Commissioners' Legal Advisors of the change in status.

- When a circulation item must be voted in one week or less, consults with the Chairman's Senior Legal Advisor or Chief of Staff for approval to distribute advance copies to the Commissioners' offices so they are prepared to vote the item upon receipt of the copy from the Office of the Chairman.

13. Emergency Circulation Items

Bureau/Office, Commissioners and Office of the Chairman:

- When the Bureau/Office is unable to obtain eCLAS access to enter the information and/or the Commissioners are unable to vote using eCLAS, the Bureau/Office completes Form A-82-P, Request for Special Action by Circulation (See **Appendix 11**). Items that are in eCLAS should be voted electronically whenever possible.
- When it is necessary to vote manually, provide a completed Request for Special Action by Circulation (Form A-82-P) and one copy of the item to the Office of the Chairman. After receiving approval from the Chairman's Office, the Bureau/Office will make distribution to the Commissioners only.
- After all the Commissioners have voted, the Bureau/Office is responsible for providing the Agenda and Publications Group with the completed Form(s).

Office of the Secretary's Agenda and Publications Group:

- Enters the item and votes from the Form(s).
- Provides vote and release information to originating Bureau/Office.

14. Editing Circulation Items

Depending upon how the edits are categorized -- **critical**, **substantive but not critical**, or **non-substantive**, will determine how they should be handled. A revised circulation item is required for critical and substantive but not critical edits.

Bureau/Office and Commissioners:

f. Critical Edits

- "Critical" edits are those:
 - (1) upon which the vote of the Commissioner proposing the edit is dependent,
 - (2) that might affect the vote of another Commissioner,
 - (3) that changes the outcome of the decision,
 - (4) that significantly alters the tone of the item,
 - (5) that adds or alters an important underlying rationale of the decision,
 - (6) that a Commissioner otherwise believes are of critical importance.

- In addition to any edits identified by the Commissioners as critical, the Bureau/Office should deem as critical any other edits from the Commissioners, OGC, or others that might reasonably be viewed as affecting any Commissioner's vote, or that meet any of the other criteria described above.
- If any Commissioner suggests critical edits to an item, he or she should not vote the item until a decision is made whether the edits will be accepted. Never vote an item "with edits" if the edits are critical. Instead, the Commissioner's office should promptly circulate a copy or summary of those edits to the other Commissioners' offices, and to OGC and the relevant Bureau/Office.
- If the Bureau/Office agrees with critical edits provided by a Commissioner (or OGC), it should promptly pull the item from circulation and formally re-circulate it to be voted anew. If the Bureau/Office does not agree with critical edits provided by a Commissioner, then the Commissioners or their staffs will discuss the proposed edits, and the item will remain on circulation as is unless, in response to the views of three Commissioners, the Bureau/Office pulls the item and re-circulates it with edits.
- To avoid multiple re-voting, when a Bureau/Office gets critical edits from one Commissioner or OGC, it should promptly solicit critical edits from the other Commissioners and OGC before re-circulating the item. It should also closely coordinate this process with all of the Commissioners and OGC. For example, it should inform them that an edited version is forthcoming.
- In the case of formal re-circulation, in order to ensure that all Commissioners are voting on the same version of the item, the table below summarizes the procedures. Repeat this procedure each time a circulation item is revised with critical edits.

Table 5: Procedures for a Revised Circulation Item with Critical Edits

Responsible Party(ies)	Action
Bureau/Office	<ol style="list-style-type: none"> 1. Identifies the item by placing the word "Revised" along with the date and time in the upper right-hand corner of the Cover Memo and on the pink-colored Agenda Item Circulation cover sheet. 2. Distributes revised circulation item as outlined in Table 4, Distribution List (Circulation).
Office of the Chairman, Administrative Officer	<ol style="list-style-type: none"> 1. Enters the "received date" by the Office of the Chairman in eCLAS (this will prevent any additional voting from taking place on the item). 2. Distributes the revised circulation item to the other Commissioners. Enter the item's return date to the floor in eCLAS (this will remove all previous votes and allow for voting on the revised copy).

Commissioners	Re-vote the item in eCLAS (will reflect a new vote and date in the system for the last version circulated).
----------------------	---

g. Substantive but not Critical Edits

- Edits that do not fall within the critical category (described above) or the non-substantive category (described below) will be "substantive but not critical." When substantive but not critical edits are made, the item should be redistributed post-adoption to the Commissioners' offices *and* OGC with edits redlined and attributed to their originating offices. This will allow each non-dissenting Commissioner to review and approve any such post-adoption edits prior to release. Use the existing Bureau Agenda Release Form for this purpose (see Section H, Bureau Agenda Release Form Approval).
- If edits are substantive but not critical, the Commissioner may choose to vote the item "with edits." Those edits, however, will be post-adoption edits if the item is not officially re-circulated. As under the current procedures, when a Commissioner votes a circulate item, he/she is voting the item as written. If a Commissioner votes for an item and proposes post-adoption edits that are not agreed to by all the other non-dissenting Commissioners that Commissioner will be among those deemed voting for the item when it is released as adopted, or with any other post-adoption edits to which all Commissioners did agree.

h. Non-substantive Edits

- The Bureau/Office may make any non-substantive changes (e.g., correcting typographical, grammatical, and spelling errors, or updating citations) without redistributing an item or obtaining Commissioners' approval on the Bureau Agenda Release Form (see Section H, Bureau Agenda Release Form Approval).

15. Items Changed from Circulation to Meeting

- Bureau/Office will process items changed from circulation to meeting status according to the meeting procedures (see Agenda Meeting Items section above).

C. SPECIAL ITEMS AND MEETINGS

16. Executive Circulates

Executive Circulates are administrative personnel actions, e.g., promotions, reassignments, etc. These documents are personnel-sensitive and are neither entered into the Electronic Commission's Lifecycle Agenda System (eCLAS), nor released to the public. In general, there is no voting time line associated with these circulates.

Managing Director:

- Submits to the Office of the Chairman along with a pink-colored Form A-83, Request for Special Action (see **Appendix 7**).

Commissioners:

- The last Commissioner who votes is responsible for returning the item and Form to the Office of the Managing Director for processing.

17. Reorganization Items

With the creation of a new organization in the Commission or if there is a major change in the functions of a Commission organization, the assigned Bureau/Office prepares a reorganization item. The Commission's Organization Manual, which is available on the FCC Intranet, contains detailed instructions on how to prepare a reorganization item.

Direct questions related to a reorganization item to the Associate Managing Director for Performance Evaluation and Records Management.

18. By Direction Letters

Bureau/Office:

- Prepares “By Direction” letters for signature of the Secretary. As with all Commission items, after approval the Office of the Secretary/Agenda and Publications Group will notify the author and provide the adopted date and Commission's vote. Again as with all items, the originating Bureau/Office must then make any requested edits and obtain the approval of the Office of General Counsel for release.
- Adds the adopted date, the FCC number, the Commission's vote, the release date and delivers a complete package consisting of the original letter, addressed envelope(s), and related documents (to be mailed) to the Office of the Secretary/Agenda and Publications Group.

Office of the Secretary's Agenda and Publications Group:

- Obtains the Secretary's signature and delivers the package to the mailroom.

19. Federal-State Joint Board

A Joint Board is a regulatory panel composed of Federal and State Commissioners established pursuant to Section 410 of the Communications Act to study and prepare recommendations concerning regulatory issues of joint concern. The Commission is also required to obtain a Joint Board recommendation before amending the jurisdictional separations procedures for implementation of universal service under section 254 and for implementation of section 229 regarding the Communications Assistance for Law Enforcement Act, and may create a Joint Board to consider other issues of mutual Federal/State concern.

Federal/State Joint Board Representative handles approved Joint Board documents in the following manner:

- (a) Hand-carry copies of the document and the Joint Board Members' names and votes to the Office of the Secretary/Agenda and Publications Group.
- (b) Board member votes that are other than written (e.g., phone, meeting) must be indicated. Votes taken at a meeting must be indicated by a member of the Commission's staff in a memo to the Secretary, certifying that he/she was present at the meeting. List the following information in the memo:
 - 1. Indicate the subject of the document voted.
 - 2. Provide the full name and title (if applicable, include State) of each Joint Board Member and their vote.
 - 3. Specify if a vote is other than "approve" or if a member is issuing a statement to be released with the item.
- (c) Upon receiving the information, the Agenda and Publications Group will assign a FCC "J" number to the document (e.g., FCC 06J-1). Joint Board documents must have a FCC "J" number before they are released to the public.

NOTE: OGC's approval is not required for Joint Board documents.

20. En Banc Hearings

An En Banc hearing is a hearing before the full Commission. En banc hearings must be announced to the public by means of a "Sunshine Notice," seven days before the hearing. **A news release is not sufficient notice.** In addition, the Sunshine Notice must be published in the Federal Register.

II. VOTING, ADOPTION AND THE BUREAU AGENDA RELEASE FORM

Below are procedures for voting and adopting meeting and circulation items and receiving approval for release of these items using the Bureau Agenda Release Form (BARF). The originating Bureau(s)/Office(s) is responsible for carrying out the instructions provided for receiving the Bureau Agenda Release Form (see **Appendix 8**) approval.

D. COMMISSIONERS' VOTE CATEGORIES

A Commissioner vote for agenda items in two ways: orally at a scheduled Commission Agenda Meeting (referred to as meeting or agenda items) or electronically in eCLAS (referred to as circulation items). In either scenario, the following table describes the categories of Commissioners' votes used as set forth by the OGC:

Table 6: Types of Commissioners' Vote

Vote	Description
APPROVE	Agree with the outcome and rationale of the item.
CONCUR	Agrees with the outcome of the item, but disagrees with the rationale.
DISSENT	Disagree with the outcome of the item.
APPROVE/CONCUR IN PART	Agrees with the outcome of the item, but disagrees with the rationale in one or more specified portions of the item.
APPROVE/DISSENT IN PART	Agrees with the outcome of one or more portions of the item, but disagrees with the outcome of the one or more specified portions of the item.
CONCUR/DISSENT IN PART	Agrees with the outcome of one or more portions of the item, but disagrees with the rationale of those portions and also disagrees with the outcome of one or more specified portions of the item.
ABSTAIN	Commissioner is present and is considered as part of the quorum, but declines to approve, dissent or concur.
NOT PARTICIPATING	Used when a Commissioner is not considered as part of the quorum, such as when a conflict of interest arises.

E. COMMISSIONERS' STATEMENT(s)

A Commissioner may amplify his/her vote by providing a statement. The following table explains different types of statements:

Table 7: Commissioners' Statement Types

Type	Description
SEPARATE	Explains an affirmative vote and highlights issues or determinations of particular importance to the Commissioner.
DISSENTING	Explains why the Commissioner disagrees with the vote of the majority.

CONCURRING	Explains why the Commissioner agrees with the majority's vote, but disagrees with the rationale used to reach the decision.
JOINT	Two or more Commissioners may choose to collaborate on a statement for an item(s).

- If a Commissioner intends to issue a statement, he or she should indicate upon voting in eCLAS by checking “statement” in the vote screen.
- The originating Bureau/Office is responsible for coordinating with the Commissioners’ staff to receive statements for their items.

F. MEETING ITEMS

21. Voting of Meeting Items

Commissioners:

- Vote to adopt meeting items (listed on the Sunshine Notice) orally at a scheduled Commission Open Agenda Meeting, unless the item is deleted from the agenda before the meeting (see Sunshine Summary and Notice section above). **Table 6** above outlines the types of votes available to the Commissioners.

Office of the Secretary’s Agenda and Publications Group:

- After the meeting, records the vote information provided by the Commissioners’ Legal Advisors for all meeting items presented.
- Emails the originating Bureau/Office and OMR with the item’s adoption date, FCC and/or Docket number, Commissioners’ vote and statements, and notice of any Commissioner voting with edits.

22. Adopted Version of Meeting Item

The last version distributed to the Commissioners, OGC, OCBO and the Office of the Secretary/Agenda and Publications Group prior to the vote at the meeting is the adopted version of an item.

The Commission's goal is to release the adopted version of an item within two business days after the meeting, but, not later than seven calendar days. (There is an exception for allowing some additional time to accommodate dissenting or other statements (see Section I, Target Release Date below)).

G. CIRCULATION ITEMS

23. Voting of Circulation Items

Commissioners:

- Vote circulation items in the Electronic Commission's Lifecycle Agenda System (eCLAS). eCLAS is a database accessible to a limited number of staff through the Commission's Novell-delivered Applications folder on each employee's desktop.
- The goal of the Commissioners' offices is to vote circulation items within 30 days of circulation, with no post-adoption critical edits (see Editing Circulation Items section above).

Bureau/Office:

- Highlights and explains in the Cover Memo to the Chairman and Commissioners the need to adopt a circulation item in less than 30 days. In addition, prioritize circulates to assist the Commissioners in addressing the most pressing items first.

i. Quorum, Must-Vote Deadline, and Extensions

Must-Vote is designed to ensure that the Commission releases items in a timely fashion once an item has secured three approving votes.

- **Quorum.** A quorum date is established by the eCLAS system once an item has been on circulation for more than 21 calendar days and three or more Commissioners have voted the item "approved." "Approved" includes votes to concur and any vote that approves an item in part (see **Table 6, Types of Commissioners' Votes**).
- **Must-Vote Date.** On the Friday following the quorum date, the eCLAS system will generate a Must-Vote date giving the remaining non-voting Commissioners a deadline of 12 calendar days to vote the item. The item should be voted by this deadline.

We provide the following example:

Item circulated: Thursday, May 5

Quorum date (if already has 3 votes to approve): Thursday, May 26

Must Vote generated: Friday, May 27

Must-Vote date: Wednesday, June 8*

* Because Must-Vote deadlines are established on Fridays, Must-Vote dates generally fall on a Wednesday. If the Must-Vote date is a holiday as defined in section 1.4(e)(1) of the Commission's rules, the Must-Vote date will be the next day on which the Commission is open for business.

- **Must-Vote eCLAS Notification Emails and Initial Extension Requests**

On the Monday prior to a “Must-Vote” date (remember, Must Votes usually initially fall on Wednesdays), eCLAS will send the *non-voting* Commissioner(s’) Senior Legal Advisors and Confidential Assistants an e-mail message stating:

“The Must-Vote deadline for this item will expire at midnight on the date noted above. To vote the item, please use this link, CLAS No.XX.

If you are unable to register a vote for the item prior to the deadline, you may request a 7-day extension. To request an extension you may either: (1) Send an email to *OS Release Group* by 4:00 pm on the Must-Vote date; or (2) Request an extension in eCLAS by midnight on the Must-Vote date. The first extension request will be automatically granted by the Office of the Secretary. After the Must-Vote deadline expires your office will be designated as ‘not participating’ and will not be able to vote this item.”

Following the initial Must-Vote notice, on *each* day thereafter until the Must-Vote date, eCLAS will send the same e-mail above to all remaining non-voting Commissioner(s’) Senior Legal Advisors and Confidential Assistants reminding them of the deadline to vote the item. The emails will be issued by eCLAS automatically, even on holidays.

- **Must-Vote Automatic Extension Request Received**

There can only be one automatic extension for an item. Thus, if any one Commissioner requests the initial extension, the voting period is extended for all non-voting Commissioners and thus no additional automatic extension will be granted.

If an extension request is made prior to the expiration of the Must-Vote deadline as specified above, the Office of the Secretary will enter a 7-day extension for all non-voting Commissioners. The non-voting Commissioners’ Senior Legal Advisors and Confidential Assistants will receive an email stating:

“The Must-Vote deadline for this item has been extended to midnight on the date noted above. To vote the item, please use this link, CLAS No.XX.

After the Must-Vote Extension deadline expires your office will be designated as ‘not participating’ and will not be able to vote this item.

Any additional requests for extension of the deadline must be submitted to the Chairman’s Office by 4:00 p.m. on the Must-Vote date.”

Beginning two business days before the 7-day extension expires and each day thereafter until the extension expires (normally on Monday, Tuesday and Wednesday if the previous Must-Vote date was a Wednesday and there are no holidays the following Monday, Tuesday or Wednesday), eCLAS will send the same email to all remaining non-voting Commissioners’ Legal Advisors and Confidential Assistants. Extensions will be entered into eCLAS by the Office of the Secretary only after the Chairman’s Office has approved the request.

- **Additional Extension Requests**

Additional requests for extensions will only be granted in extraordinary circumstances, and for a limited period of time. The Chairman or the Chief of Staff may grant such an extension, and will be responsible for communicating that grant to the Office of the Secretary.

- **Must-Vote Deadline Expires**

- If the original Must-Vote deadline passes with no extension request or all extension deadlines have passed without a further extension being granted by the Chairman's Office and no vote is entered into eCLAS, then a vote of **"not participating"** will be entered in eCLAS for the remaining non-voting Commissioner(s) by noon the next business day.

24. Adoption of Circulation Items

Adoption of a circulation item occurs when the last Commissioner votes in eCLAS. After adoption, the eCLAS system:

- assigns FCC number

the Agenda and Publications Group:

- receives the Docket number (if applicable) from the FCC Reference Center
- emails the item's vote sheet to the author (the vote sheet provides the adoption date; FCC and/or Docket number, Commissioner votes and statements, and notice of any Commissioner voting with edits).

j. Vote Retraction of an Adopted Circulate Item

Chairman and Commissioners:

- Can retract his/her vote on an adopted circulate, only if it meets all of the following criteria:
 - The item is not released;
 - No news release or other public indication of adoption has occurred; and,
 - All other Commissioners agree to the retraction.

Office of the Chairman:

- Once the above requirements are met, then the Office of the Chairman shall have the option to direct the Bureau/Office and the Office of the Secretary to:
 - Recirculate the item and allow all Commissioners to revote the item; or
 - Withdraw only the vote of the Commissioner who wishes to change his/her vote (do not recirculate the item).

- Either option will require a new adoption date.

H. BUREAU AGENDA RELEASE FORM (BARF) Approval

Form A-501, Bureau Agenda Release Form (see **Appendix 8**) indicates the dates and times of both the adopted and final versions (do not use the adopted date alone), and whether there are any substantive differences (edits) between the two versions.

This form ensures that all non-dissenting Commissioners agree with the final version of the adopted meeting or circulation item before its release and it also provides for the approval of OGC. This form is required before the Office of the Secretary/Agenda and Publications Group can process an item for release.

Bureau/Office:

The table below outlines the appropriate BARF approval steps to follow for both a meeting and circulation item with non-substantive edits by the originating Bureau/Office.

Table 8: BARF Approval Process for Non-Substantive Edits

1. On the BARF, enter the assigned FCC No., CLAS No., type of document, check “circulate” or “meeting,” title, dates and times of both the adopted and final versions (the adopted date alone should not be used), Bureau/Office contact and telephone number.
2. Bureau/Office Chief or his authorized representative will answer the question “Are there any substantive differences between Adopted and Final Versions?” by checking the appropriate box. If NO, proceed with the steps in this table or YES, follow the steps in Table 9, BARF Approval Process for Critical or Substantive Edits .
3. Bureau/Office Chief or his/her authorized representative signs certifying that there are no substantive differences between the adopted and final version.
4. Hand-deliver to OGC, Administrative Law Division for approval (place in Agenda Items Box, allow 24 hours): the signed Form(s), a copy of the final version, and a redline version (showing the difference between the adopted version and final version). OGC will review the final edits for legal concerns and provide appropriate signatures. In emergencies (to be released in less than 24 hours), after the Bureau/Office delivers Form A-501 to OGC, OGC shall have the option of indicating on the Form that the item was not reviewed because of time constraints. Bureau/Offices are responsible for collecting signed form(s).
5. Deliver to the Agenda and Publications Group (Room TW-B204I) the signed BARF form(s), an original and two copies of document (unstapled, one-sided), and the redlined version. APG will: sign the BARF, review the document (allow 2 hours

for review), notify the author of release approval, and if applicable, changes.

6. Bureau/Office makes a copy of the signed BARF for their records and follows the appropriate Commission release procedures.

The table below outlines the appropriate BARF approval steps to follow for both a meeting and circulation item with critical or substantive edits by the originating Bureau/Office.

Table 9: BARF Approval Process for Critical or Substantive Edits

1. On the BARF, enter the assigned FCC No., CLAS No., type of document, check “circulate” or “meeting,” title, dates and times of both the adopted and final versions (the adopted date alone should not be used), Bureau/Office contact, and telephone number.

2. Bureau/Office Chief or his authorized representative will answer the question “Are there any substantive differences between Adopted and Final Versions?” by checking the appropriate box. If NO, follow the steps in **Table 8, BARF Approval Process for Non-Substantive Edits** or YES, proceed with the steps in this table.

3. Bureau/Office Chiefs (or authorized designees) are required to receive final release approval from each non-dissenting Commissioners’ or authorized designee (Please note: a dissenting Commissioner approval is not required to sign the BARF form; if he or she dissents in part, approval is required only for the portions from which he or she did not dissent).

There are four methods for securing approvals from the Commissioners’ or authorized designee (you may use more than one method as appropriate):

- a) Deliver a paper copy of the final version and obtain an authorized signature from each Commissioner’s office on a single BARF Form.
- b) Email or deliver a paper copy of the final version and obtain verbal approval from each Commissioner or authorized designee. The Bureau/Office staff member who receives verbal approval must indicate on the Form A-501 the date and time and the name of the person in the Commissioners’ office who gave the approval and the B/O staff member must sign the BARF Form.
- c) Deliver a paper copy of the final version and provide each Commissioner’s office with a separate BARF Form, for individual signatures. Bureau/Offices are responsible for collecting signed forms.
- d) Email or deliver a paper copy of the final version and obtain email approval from Commissioner or authorized designee. Emails must be printed and attached to Form A-501. Indicate in the appropriate signature area “Email Approval Attached.”

4. Hand-deliver to OGC, Administrative Law Division for approval (place in Agenda Items Box, allow 24 hours): the signed Form(s), a copy of the final version,

and a redline version (showing the difference between the adopted version and final version). OGC will review the final edits for legal concerns and provide appropriate signatures. In emergencies (to be released in less than 24 hours), after the Bureau/Office delivers Form A-501 to OGC, OGC shall have the option of indicating on the Form that the item was not reviewed because of time constraints. Bureau/Offices are responsible for collecting signed form(s).

5. Deliver to the Agenda and Publications Group (Room TW-B204I) the signed BARF form(s), an original and two copies of document (unstapled, one-sided), and the redlined version. APG will: sign the BARF, review the document (allow 2 hours for review), notify the author of release approval, and if applicable, changes.

6. Bureau/Office makes a copy of the signed BARF for their records and follows the appropriate Commission release procedures.

I. TARGET RELEASE DATES

Bureau/Office:

- Releases meeting and circulate documents within two business days after adoption, but, not later than seven calendar days.
- Exception: Where a Commissioner has indicated a willingness to prepare a dissenting or other statement for a document, the Office of the Secretary grants an additional four calendar days, extending the release to 11 calendar days. When the Bureau/Office receives the statement, promptly incorporate responsive edits in the document, receive Bureau Agenda Release Form approval and release the document.
- Coordinates with the Office of the Secretary's Agenda and Publication Group the release date for the decision document.

Office of the Secretary/Agenda and Publications Group:

- Coordinates the release with the Bureau/Office for all FCC documents, as well as the release date with the Office of Media Relations and the FCC Print Plant.
- Reviews all FCC documents for style and format and information accuracy (FCC and/or Docket numbers, vote line, applicable statements received, BARF approval, etc.) before releasing.