

# Streamline, Simplify, Deregulate: The FCC Adopts “Direct Final Rule” Approach to Expedite Rule Deletions

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## TAKEAWAYS

- ④ Changes to certain outdated or obsolete regulations may be adopted as Final Rules without prior notice and comment and published in the *Federal Register*.
- ④ The public may comment on the rule changes during the first 10 days following publication.
- ④ If the FCC determines that significant adverse comments have been submitted, it will withdraw the *Federal Register* publication and open a traditional notice and comment proceeding.

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Earlier this year, Federal Communications Commission (FCC) Chairman Brendan Carr initiated a sweeping initiative to review “every rule, regulation, or guidance document” that could be eliminated “for the purposes of alleviating unnecessary regulatory burdens.” At its July Open Meeting, the Commission voted 2-1 to adopt a Direct Final Rule framework to enable it to act expeditiously in the *In re: Delete, Delete, Delete* proceeding to repeal certain legacy regulations that have become “outdated, obsolete, unlawful, anticompetitive, or otherwise no longer in the public interest.” The principal feature of the Direct Final Rule approach is to permit the elimination of rules without the notice and comment procedures typically required under the Administrative Procedure Act (APA). The FCC’s lone Democrat, Commissioner Anna Gomez, dissented, expressing concern that the Direct Final Rule process circumvents essential transparency and due process safeguards, sidestepping a mechanism for public involvement.

At the highest level, the APA establishes the framework by which federal agencies like the FCC propose, adopt, modify and revoke regulations, thereby ensuring transparency and public participation in the process. In adopting the Direct Final Rule, the FCC explained that there is “good cause” under the APA to forgo this

notice and comment process where it is “unnecessary,” such as where the administrative rules to be modified or eliminated are insignificant or inconsequential to the public. In its recent efforts, the FCC deleted 11 rule provisions comprising 39 regulatory “burdens” it said related to obsolete technology, outdated marketplace conditions, expired deadlines or repealed legal obligations, and which therefore no longer serve the public interest.

In adopting the Direct Final Rule approach, the FCC did not wholly eliminate the opportunity for public notice and comment. Instead, rule changes will be adopted without prior notice and comment and then published in the *Federal Register*. During the first 10 days following publication, the public may comment on the rule changes. If the FCC determines that significant adverse comments have been submitted, it will withdraw the *Federal Register* publication and open a traditional notice and comment proceeding. If no significant adverse comments are filed, the rule change(s) will take effect on the 60th day following publication. Determinations as to what constitutes “significant adversity” are made at the FCC’s complete discretion.

Absent a withdrawal notice, the FCC does not anticipate making any further publications or statements on specific rule changes, so affected entities must be vigilant. Interested parties seeking retention of specific regulations—particularly those that have already been identified as candidates for elimination in the *Delete, Delete, Delete* docket—should be closely monitoring the *Federal Register* in order to submit comments opposing rule changes within the 10-day window. More broadly, potentially affected parties should work with their counsel to assess which rules are most vital to their operations, to ensure they are alert to any coming changes and the impacts that those changes could have on compliance and reporting obligations.

If you have any questions about the *Delete, Delete, Delete* proceeding, or need help determining how these changes might affect you or your company’s operations, please contact a member of Pillsbury’s Communications Practice Group.

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