

Rulemaking and Case Management Processes, and Stakeholders' Participation

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Introduction

The presentation is organized into four parts:

1. Statutory Authority for Rulemaking
2. Rulemaking Process and Stakeholders' Participation
3. Classification of Cases and Proceedings, Duties and Responsibilities of Commission Staff
4. Competencies Required of Staff (Case Managers)

1. Statutory Authority for Rulemaking

Generally, the Commission has broad powers to promulgate Rules and Regulations for implementing the law enacted by the Legislature. The law may be general or prescriptive, and in either case, would make provisions for the Commission to issue Rules and Regulations to complement and delineate the intentions of the law. In the District of Columbia the law is codified in the District of Columbia Code (D.C. Code). Statutory authority for conducting investigations and hearings is contained in D.C. Code Section 343-901 *et. seq.* (Law), and provides as follows:

1. Statutory Authority for Rulemaking *ctd.*

COMMISSION HAS POWER TO ADOPT RULES AND REGULATIONS THAT GOVERN THE MODE AND MANNER OF ALL INVESTIGATIONS AND HEARINGS OF PUBLIC UTILITIES AND PARTIES THAT APPEAR BEFORE IT.

COMMISSION CAN INVESTIGATE ANY CHARGES OF UNJUST RATES OR UTILITY SERVICES WITH OR WITHOUT A HEARING BUT COMMISSION CANNOT ISSUE ANY ORDER AFFECTING SUCH RATES WITHOUT A FORMAL HEARING. (A Formal Hearing is defined as a case where there are facts that are in dispute and are contested and require that parties have the right to cross-examine each other.)

1. Statutory Authority for Rulemaking *ctd.*

ANY UTILITY RATE APPLICATION OR APPLICATION FOR CHANGE IN SERVICE REQUIRES PUBLIC NOTICE, TO BE SENT OUT IN UTILITY NEXT BILLING AFTER APPLICATION, AND COMMISSION MUST CONDUCT A PUBLIC HEARING ON APPLICATION. (A Public Hearing is a hearing convened to obtain information from the public regarding matters that impact the general public i.e., rate making affects the general public because it sets the rates that everyone must pay for utility services)

1. Statutory Authority for Rulemaking *ctd.*

ALL FORMAL INVESTIGATIONS, WHICH REQUIRE HEARING, ARE REQUIRED TO BE RECORDED BY STENOGRAPHER (the Commission has broad discretion to determine whether a hearing is formal versus informal. Formal hearings are usually required when the ruling will impact the general public or the utilities cost of service; informal hearings do not affect individual rights and do not require cross-examination

(Authority for the FCC to carry out investigations and hearings is embodied in the US Telecommunications Act of 1996)

2. Rulemaking Process and Stakeholders' Participation

2.1 Overview of the Federal Communications Commission Rulemaking Process

This overview provides a step-by-step explanation of how the FCC determines telecommunications rules and policies. Input from the public as well as regulated industry is a crucial part of the FCC rulemaking process. Understanding this process enables Stakeholders take advantage of the opportunity to comment and express their views on FCC proceedings. The FCC also provides information to the public on how to file comments. The overview information is generally applicable but particular proceedings may differ. When submitting comments in response to a FCC notice or other document, the public is advised to always refer to the document for specific instruction.

2. Rulemaking Process and Stakeholders' Participation *ctd.*

The Steps Are:

- Step 1. Petition for Rulemaking
- Step 2. Notice of Inquiry or Notice of Proposed Rulemaking
- Step 3. Further Notice of Proposed Rulemaking
- Step 4. Report and Order
- Step 5. Petition for Reconsideration
- Step 6. Memorandum Opinion and Order

Step 1. Petition for Rulemaking

Suggested changes to FCC rules and regulations originate from sources both within and outside the Commission. When submitted from outside the Commission, they should be in the form of Petitions for Rulemaking.

Step 1. Petition for Rulemaking

Step 1(a). A Stakeholder files a Petition for Rulemaking. The Commission reviews the filing and determines whether or not to accept it.

Step 1(b). The Commission issues news release. The Commission regularly issues a news release listing the Filings accepted by the FCC. This Filings News Release also lists other documents that companies and individuals sent to the FCC. In addition to petitions for rulemaking, the News Release may contain comments, reply comments, clarifications, motions, proposals, and waiver requests

Step 1(c). The public submits comments. The public has 30 days to submit comments, or as directed in the notice. This is an opportunity to state reasons why a Petition for Rulemaking should be granted or denied.

Step 2. Notice of Inquiry or Notice of Proposed Rulemaking

After reviewing the comments received in response to a Petition for Rulemaking, the FCC will typically issue either an Order disposing of the petition, a Notice of Inquiry (NOI), or a Notice of Proposed Rulemaking (NPRM).

Step 2. Notice of Inquiry or Notice of Proposed Rulemaking

Step 2(a). A Notice of Inquiry. A notice of inquiry is designed primarily for fact gathering and seeks comment from the public and industry in order to obtain more information. The document describes where and when comments may be submitted. Interested parties may also review what comments were received and, in most cases, submit comments in reply to other parties' submissions.

Step 2. Notice of Inquiry or Notice of Proposed Rulemaking

Step 2(b). Order or Notice of Proposed Rulemaking. After reviewing the comments submitted in response to a Notice of Inquiry, the FCC may release an Order explaining why the FCC is not taking further action, or it may issue a Notice of Proposed Rulemaking.

A Notice of Proposed Rulemaking is issued to detail proposed changes to FCC rules or to seek public comment on more focused proposals. The document describes where and when comments may be submitted. As is the case with most Notices of Inquiry, the public may review the comments received and submit comments in reply to other parties' submissions.

Step 2. Notice of Inquiry or Notice of Proposed Rulemaking

Step 2(b). Order or Notice of Proposed Rulemaking (contd.)

Notices of Inquiry and Notices of Proposed Rulemaking both contain Docket Numbers, which are printed in the document header. Identification of this number will assist stakeholders' research.

The Office of Public Affairs produces a weekly News Release, of Open Proceedings, that lists current FCC Notices of Proposed Rulemaking and Notices of Inquiry that are open for public comment and includes pertinent Public Notices announcing comment subjects and dates.

Step 3. Report and Order or Further Notice of Proposed Rulemaking

After reviewing the comments received in response to a Notice of Proposed Rulemaking, the FCC may issue a Report and Order explaining the FCC's actions on the proposed rule changes, **OR** it may issue a Further Notice of Proposed Rulemaking regarding issues raised in comments or to provide an opportunity for the public to comment further on a related alternative proposal, **OR** it may issue a Further Notice of Proposed Rulemaking in conjunction with the Report and Order. The issuance of all subsequent Notice of Proposed Rulemaking will again establish a period for filing comments and reply comments to address the unresolved issues.

Step 4. Report and Order

After considering comments and reply comments, the FCC may issue a Report and Order amending the rules or make a decision not to do so. The FCC may issue additional Report and Orders in the Docket if there is an outstanding issue to be resolved at a later date, or if there are additional rulemaking proposals in the Docket.

Step 5. Petition for Reconsideration

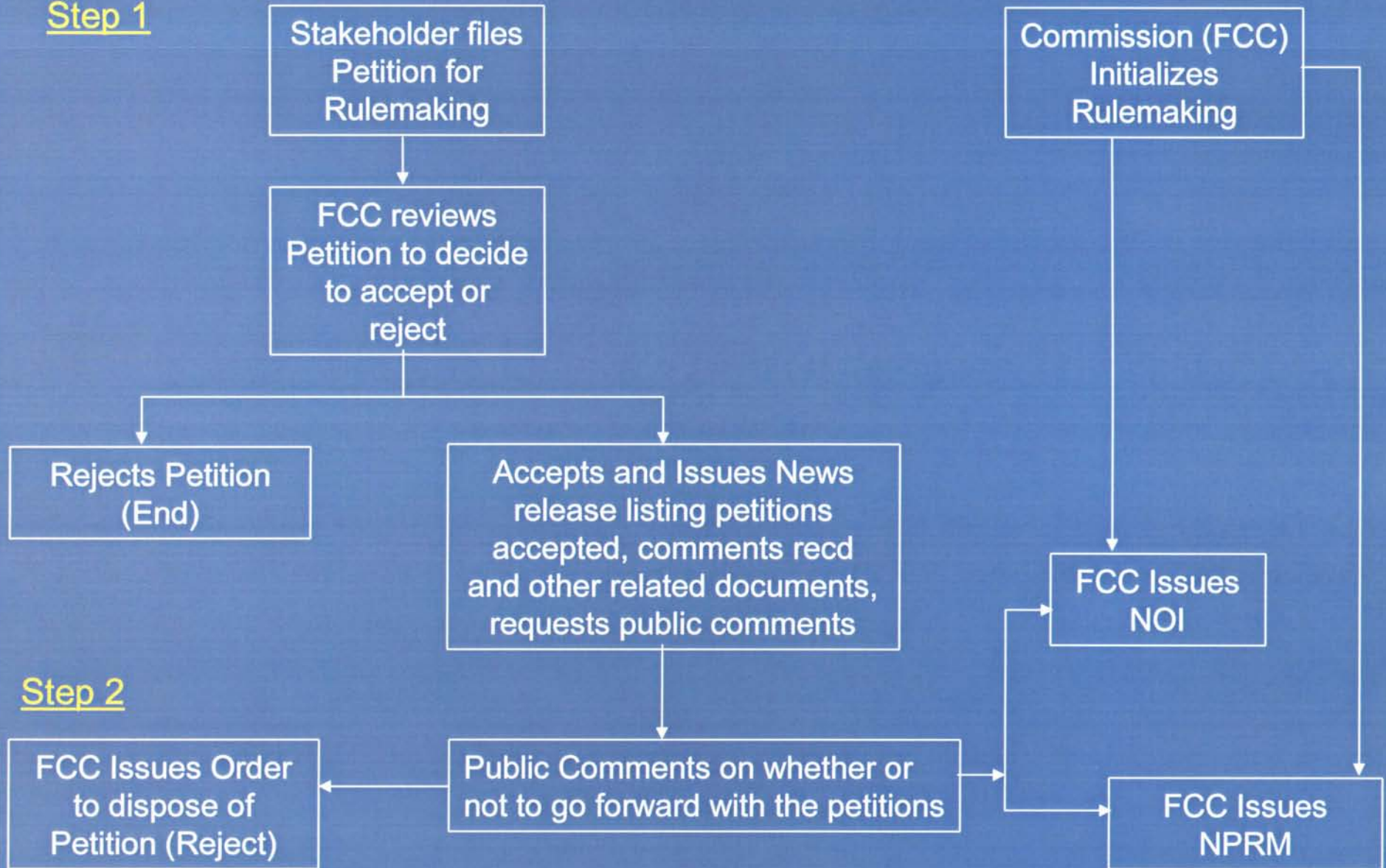
After the FCC issues a Report and Order, interested parties generally have 30 days to file a Petition for Reconsideration to request that the FCC reconsider its decision.

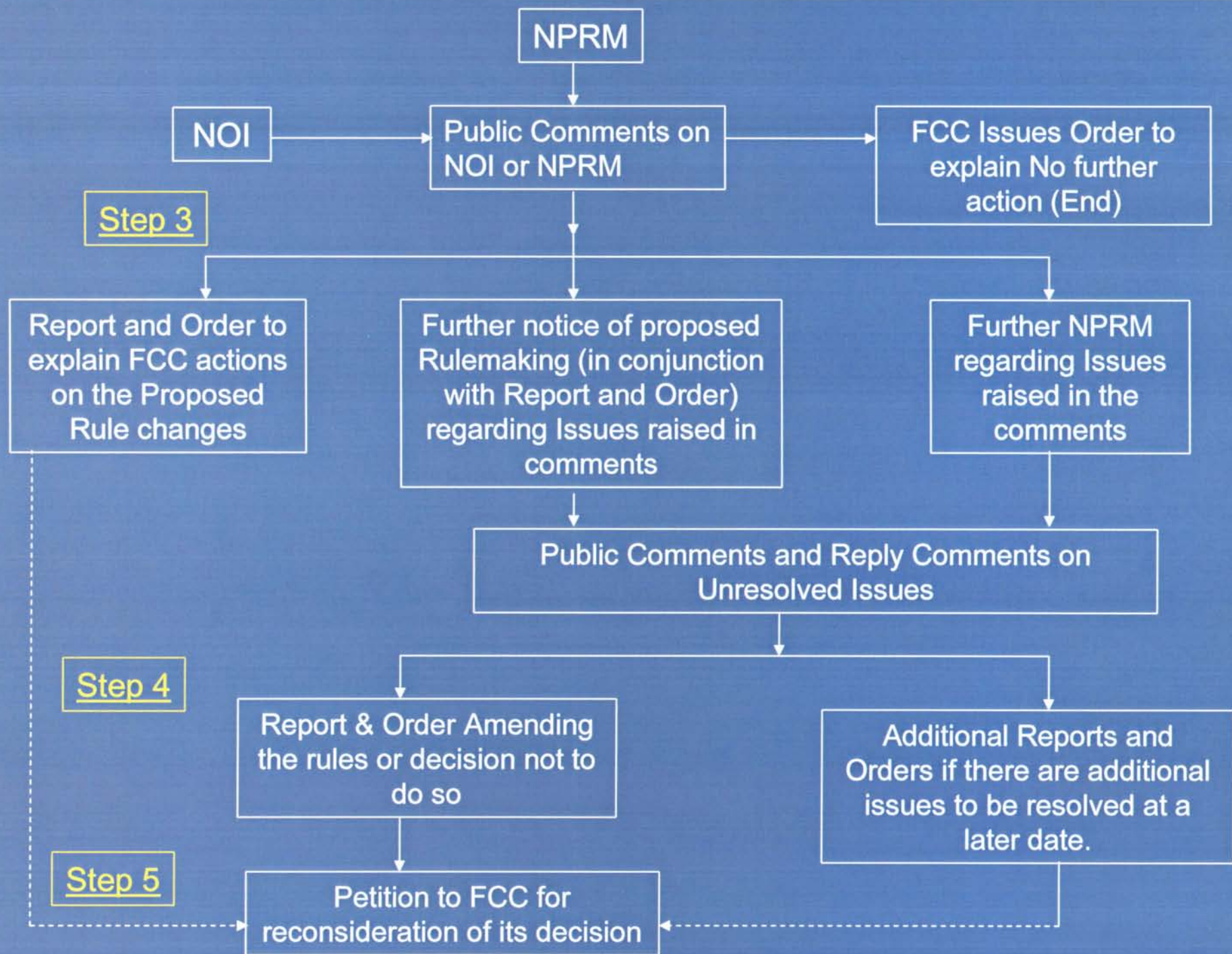
Step 6. Memorandum Opinion and Order

A Memorandum Opinion and Order is issued by the Commission to deny a petition for rulemaking, modify a decision, grant or deny a petition for reconsideration, or grant or deny an application for review of a decision. A second or third Memorandum Opinion and Order may be issued (2nd MO&O, 3rd MO&O). Other appropriate titles may also be used, e.g., Order on Reconsideration or Order on Review.

2.2 Rule Making Process Schematic

Step 1





Step 6

Petition for
Reconsideration

Memorandum Opinion and Order
(MO&O)

MO&O to
Grant or Deny
Petition for
Reconsideration

MO&O to
Modify a
decision

MO&O to Deny
application for
review of a
decision

Additional MO&O may be issued (2nd MO&O, 3rd
MO&O, etc.)

Courts

3. **Classification of Cases and Proceedings, Steps and Duties of Staff**

The Commission classifies its proceedings into Formal and Informal proceedings.

3.1. Formal Proceeding: A case is classified as a formal case when its ruling will affect the general public. Associated with Formal Cases are **Formal Proceedings or Formal Hearings**. The Commission has the discretion to designate a case as formal or otherwise except those requiring formal hearing as provided by law (setting rates or changes in rates). Prior to holding a Formal hearing, a **Procedural Hearing** or a **Pre-hearing Conference** is held in which parties agree on designated issues, schedule for the hearing, and order of appearance of witnesses.

3. Classification of Cases and Proceedings, Steps and Duties of Staff (*Contd.*)

3.2 Informational Hearing (Proceeding):

A second type of hearing is Informational Hearing in which the Commission seeks information from the parties through filings and testimony without cross-examination of the witnesses (Public Hearing, Paper Proceeding, NOI).

3.3 Steps, Duties and Responsibilities of Staff in a formal (adjudicated) Case

STEPS	TECH Staff	Legal Staff
Company files testimony	Prepare summary for the website	Review and advise
	Review and advise	Pre-hearing order requesting proposed issues and procedural schedule
Pre-hearing conference	Prepare questions	Prepare questions
	Attend hearing	Attend hearing

STEPS	TECH Staff	Legal Staff
	Advisory memo with recommendations re final issues	Order re final issues and procedural schedule
Company files supplemental testimony	Review and advise	Review
Data requests	Review	Review
Data responses	Review	Review
	Advisory memo	
Motions to compel	Review	Review
	Advise OGC re technical matters	Order
Intervenors file testimony	Review	Review
Data requests	Review	Review
Data responses	Review	Review

STEPS	TECH Staff	Legal Staff
	Advisory memo	
Motions to compel	Review	Review
	Advise OGC re technical matters	
Rebuttal testimony	Review	Review
Data requests	Review	Review
Data responses	Review	Review
	Advisory Memo	
Motions to compel	Review and advise	Review
	Advise OGC re technical matters	Order
Pre-hearing briefs	Review and advise	Review
	Summary advisory memo	Briefing Book

STEPS	TECH Staff	Legal Staff
	and schedules and proposed questions to be included in briefing book	
	Prepare PowerPoint presentation for briefing	Prepare PowerPoint presentation for briefing
	Participate in Commissioners' briefing	Participate in Commissioners' briefing
Formal Hearing	Participate	Participate
Community Hearing	Attend	Attend
Transcripts (Formal and Community Hearings)	Review and advise	Review

STEPS	TECH Staff	Legal Staff
Motions to Change Transcripts	Review and advise	Order
Initial and Reply briefs	Review and advise	Review
	Advisory memo	Order

3.4 Other Related Legal and Technical Staff Advisory Services to the Commission.

1. Advises the Commission regarding its statutes and precedent to determine jurisdiction and how the case should be treated for assessment purposes
2. Provides guidance on issues likely to be raised in the case, and recommends additional resources that may be needed (e.g. Consultants)
3. Researches and appraises the Commission on how the issues in the case have been handled previously by the Commission
4. Researches and appraises the Commission on how the issues in the case have been addressed by other state public service commissions and applicability for D.C.
5. Researches and appraises the Commission on how the issues in the case have been impacted by matters decided by or before federal regulatory agencies (or other national agencies e.g., FERC, FCC, DOJ, FTC, etc.)
6. Reviews filings and proposes designated issues

Other Related Legal and Technical Staff Advisory Services to the Commission (Contd.)

7. Prepares advisory memoranda that summarize the positions of the parties on each issue, conducts analyses, identifies options, and makes recommendations at each stage of the proceeding (*i.e.*, company testimony, interveners' testimony, rebuttal testimony, or comments and reply comments)
8. Prepares briefings for the Commissioners, including PowerPoint presentations
9. Proposes questions for hearings, explains relevance of questions and anticipated answers and follow-up questions
10. Participates in hearings by providing information, recommendations re testimony at the hearing; recommends follow-up questions based on witnesses' testimony during the hearing
11. Prepares summary tables and schedules that compare and contrast positions of the parties on the issues in the case
12. Responds to inquiries from interested parties regarding the status of the case
13. Keeps the Commission apprised of the status of similar and related proceedings in other state and federal jurisdictions that might have implications for the District
14. In those instances in which post-hearing settlements are reached, evaluates the proposals and prepares advisory recommendation memos to the Commission.

3.5 Processing Tariff Requests (i.e. TTs, GTs and ETs) [120-day deadline]

1. Reviews tariff filing
2. Ascertains if there is any historical precedence for the filing in previous cases
3. Prepares NOPR (NPRM) which presents the proposed service or change in existing service in language that is easily understood, for public comments.
4. Determines whether appropriate cost study has been filed
5. Reviews cost study (if submission contains cost study) to determine compliance with applicable regulation- Rate Return of Price Cap (Incentive Reg).

3.5 Processing Tariff Requests (i.e. TTs, GTs and ETs) [120-day deadline]

6. Prepares data requests as needed
7. Reviews comments and reply comments once they are filed
8. Prepares technical, legal or joint advisory memo for Commissioners, with results of analysis and recommended action
9. Drafts Order and NOFR (MO&O) with OTRA input
10. Works with appropriate staff to ensure NOFR and NOPR are submitted to the Office of Documents for publication in the DC Register.

4. COMPETENCIES REQUIRED OF STAFF

A. *Professional Competency/* Job Knowledge

1. Displays analytical proficiency. Is effective in working with, understanding, and evaluating technical information related to the job
2. Conducts sound legal and technical research
3. Formulates legal, procedural, technical, and policy positions
4. Displays competency in legal and technical disciplines
5. Displays competency in Commission-related activities
6. Exercises sound legal and technical judgment
7. Communicates effectively (orally and in writing)
8. Capably handles all stages of proceedings

4. COMPETENCIES REQUIRED OF STAFF

***B. Management Skills/* Operations Planning and Evaluation**

1. Demonstrates leadership
2. Demonstrates ability to make sound decisions, as appropriate
3. Builds and maintains successful working relationships with colleagues
4. Effectively manages conflict, confrontations, and disagreements so as to minimize adverse impact.
5. Meets performance and commitment requirements and agreements
6. Conserves resources by completing assignments within budget, whenever possible
7. Establishes and monitors schedule for timely completion of required tasks

4. COMPETENCIES REQUIRED OF STAFF

C. *Collaboration Skills* /Teamwork

1. Adaptable (willing to modify views for advancement of team)
2. Committed to team objectives
3. Communicative (shares information and understanding)
4. Dependable (can be counted on to perform)
5. Empowering (taps into underutilized human potential)
6. Enthusiastic (provides energy for teamwork)
7. Interpersonal-relations (gets along well with others)
8. Selfless (focuses on team, not self)
9. Solution-oriented (resolved to discovering solutions rather than making excuses)
10. Tenacious (reluctant to quit)
11. Autonomous (permitting self-management of teams)
12. Negotiates with parties

4. COMPETENCIES REQUIRED OF STAFF

D. Organizational Skills

1. Responsible (puts best interests of the Commission first)
2. Supportive (helps others do their best)
3. Collegial (contributes to a team environment)
4. Involved (fully participates)
5. Organizes work, sets priorities, understands Commission mission
6. Anticipates future consequences and trends, and creates improvement strategies and plans