

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

In the Matter of)
)
Modification of Subpart G, Section 0.701)
of the Commission's Rules)

ORDER

Adopted: July 17, 2003

Released: August 11, 2003

By the Commission: Chairman Powell, Commissioners Abernathy, Adelstein and Copps issuing separate statements.

I. INTRODUCTION

1. In this Order, we adopt revisions to the rules governing the Federal Communications Commission's (Commission) Local and State Government Advisory Committee (Committee or LSGAC), a committee that advises the Commission on a range of telecommunications issues affecting local, state, and tribal interests. During its first six years of operation, the Committee has been a significant source of information and guidance to the Commission. The rule changes we make today are intended to facilitate its ability to continue to provide meaningful advice to the Commission by strengthening and improving the Committee's overall structure and operations. We acknowledge the valuable contributions of the LSGAC and its members, and affirm our commitment to continuing the dialogue through this important advisory group.

II. BACKGROUND

2. The LSGAC was created in 1997 to provide guidance to the Commission on issues of importance to state, local and tribal governments, as well as to the Commission.¹ Because it is composed exclusively of state, local and tribal officials, it is not subject to the procedures set forth in the Federal Advisory Committee Act (FACA), and presently has no charter or expiration date.² The Committee is composed of 15 elected and appointed officials of municipal, county, state, and tribal governments.³

¹ See Adoption of Subpart G, Section 0.701 of the Commission's Rules, *Order* 16 FCC Rcd 1183 (2001).

² See 2 U.S.C. § 1534(b); see also 5 U.S.C., App. 2 (1988).

³ Section 0.701 of the Commission's rules presently provides for an LSGAC composed of: 1) six elected municipal officials (city mayors and city council members); 2) three elected county officials (county commissioners or council members); 3) one elected or appointed local government attorney; 4) one elected state executive (governor or lieutenant governor); 5) two elected state legislators; 6) one elected or appointed public utilities or public service commissioner, and 7) one elected or appointed Native American tribal representative. 47 CFR §0.701.

3. The Committee has provided ongoing advice and information to the Commission on a broad range of telecommunications issues of interest to state, local and tribal governments, including cable and local franchising, public rights-of-way, facilities siting, universal service, barriers to competitive entry, and public safety communications, for which the Commission explicitly or inherently shares responsibility or administration with local, county, state, or tribal governments. Since its inception, the LSGAC has filed 31 “Recommendations” with the Commission.⁴

4. In our view, the LSGAC has provided an important perspective over the last six years and continues to be a valuable resource to the Commission. In modifying our rules, we seek to further enhance the important role of the Committee in bringing the views of local, state and tribal governments to the Commission. Thus, for example, we make revisions to maintain and strengthen its intergovernmental nature and qualification as an advisory committee exempt from the requirements of the FACA.⁵ We also establish guidelines for the application process that will ensure continued diversity in Committee membership and access to a wide range of viewpoints and expertise, which are critical to informed decisionmaking as the Commission’s focus and priorities evolve over time in response to technical, market, and other changes in segments of the Commission’s jurisdiction. In particular, we will use these guidelines to solicit increased representation of rural interests and to attract members with expertise in homeland security matters. We also seek to preserve and enhance the effectiveness of the Committee’s operations on a going-forward basis by, for example, limiting the number of meetings held per year to minimize the burdens on Committee members and enable members to attend meetings themselves, rather than sending a representative in their stead.

5. In adopting these changes, we are guided by our recent experience in rechartering the Consumer Advisory Committee (CAC).⁶ Although the two committees are organized differently and serve different purposes,⁷ our success in that effort has prompted us to implement changes in the LSGAC that we believe will enhance its ability to continue providing valuable information and advice in the future.

III. DISCUSSION

6. Below, we discuss the impetus for, and details of, the specific rule changes we adopt today. In doing so, we note the valuable contributions that current members have provided over the last six years.

a. Structural Modifications

7. *Term of Operations; Service.* Section 0.701 contains no sunset provision or term limits for Committee membership. As we have observed in other contexts, however, establishing limits on a committee’s term of operations and on the duration of individual members’ service can provide focus and

⁴ These recommendations can be accessed at <http://www.fcc.gov/statelocal/recommendations.html>.

⁵ See 2 U.S.C. § 1534(b); see also 5 U.S.C., App. 2 (1988).

⁶ See Public Notice, FCC Announces Rechartering of Consumer Advisory Committee (CAC), Formerly Known as the Consumer/Disability Telecommunications Advisory Committee (C/DTAC); Requests Applications for Membership on CDC, DA 02-3606 17 FCC Rcd 27,872 (2002).

⁷ Unlike the LSGAC, the CAC is subject to the requirements of the FACA.

a profitable sense of urgency with respect to a committee's agenda and course of deliberations. The Commission's other advisory committees have typically been chartered for a period of two years. Accordingly, we have modified section 0.701 to provide for the sunset of the Committee two years following its first scheduled meeting under these new rules. We believe that a period of two years provides sufficient time for members of the Committee, as well as the Commission, to assess the effectiveness of the modifications we adopt today. The Chairman of the Commission may extend the Committee's term of service for an additional two years thereafter, consistent with the overall mission, goals and objectives of the Committee.

8. The two-year limit on the Committee's term of operations also limits the duration of individual members' service on the Committee. We believe that this limitation is consistent with members' interests, as well as the interests of the Committee at large. Because service on a committee of this nature represents a significant investment of time and resources, establishing a specific term of service at the outset defines expectations and allows individuals to consider participation who might otherwise be unable to participate were the term to remain open-ended.

9. *Membership, Diversity, and Balance of State, Local and Tribal Representation.* We have found 15 members to be workable for purposes of balancing the need for diversity with that for a small enough number of participants to promote effective discussion. Thus, we make no changes to the present size of the Committee.

10. In establishing the LSGAC, the Commission sought to achieve a wide diversity of representation and viewpoints. Thus, it reserved a set number of member seats for local, state and tribal officials, aimed at balancing the voices at the table. At the beginning of this year, the Committee was composed of one state official, six municipal officials, two county officials, one local government attorney, one public utility commissioner, and one tribal official. Of these, four positions are presently vacant – one county official, two state legislators, and one state executive (governor or lieutenant governor). A demographic analysis of the LSGAC membership at the beginning of this year reveals that it is weighted heavily on the local side and may lack sufficient rural representation.

11. To address questions of balance and diversity of representation, we are implementing certain practices designed to achieve as diverse a mix of local, state and tribal perspectives as possible. Specifically, we believe that the need for diverse representation can best be met by an advisory committee composed of seven local, five state, and three tribal officials, and will use the Public Notice that commences the application process to solicit members from rural areas, in particular. In soliciting a diversity of representation, we will also seek input and guidance from organizations representing state, local and tribal interests, such as the National Association of Regulatory Utility Commissioners, the National Congress of American Indians, the National Governors Association, the National League of Cities, the U.S. Conference of Mayors, and others.

12. In addition, we commit to increasing tribal representation on the Committee to enhance our opportunities to hear directly from tribal government leaders. At present, the LSGAC has only one tribal representative. We are concerned that this small percentage of tribal members may create a perception that this Committee is of limited utility to tribes, either because the tribal voice is too limited or because the topics addressed are insufficiently relevant to the unique problems and issues facing tribes. Moreover, we believe that an increase in the tribal voice is warranted if tribes are to commit their very scarce human and financial resources to Committee activities. Therefore, we have added two more tribal members to the Committee. In light of this change in representation, we believe it appropriate to rename the Committee the "Intergovernmental Advisory Committee" to reflect its more diverse representation.

13. We also clarify that Committee members must be officials within the meaning of section 1534(b), the intergovernmental exemption from the FACA accorded intergovernmental communications between Federal officials and officials of state, local and tribal governments “acting in their official capacities.” The input that Congress sought to facilitate through the intergovernmental exemption is institutional in nature. Thus, the exemption targets communications with officials involved in the governmental process at the state, local and tribal levels. We clarify here, that to be appointed to the Committee, a member such as “an elected or appointed local government attorney,” must be on the staff of the municipal or county government represented and be part of the governmental process.⁸ We do so to ensure that the Committee can continue to operate with the informality and flexibility that have proven so effective in the past and that inhere in its FACA-exempt status.

14. *Balance of Geographic and Urban/Rural Representation.* At the beginning of this year, two thirds of the LSGAC’s members represented areas west of the Mississippi River: two from the South/Southwest (Arkansas, Texas), four from the Midwest (Michigan (2), Minnesota, South Dakota), one from the West (Colorado) and three from the Pacific Northwest (Alaska, Oregon (2)). While we do not adjust the present geographic representation by requiring that a certain number of members represent specific geographical regions of the country, we will use the application and appointment process to encourage representation from areas that may not have been as well-represented as others in the past, such as some Southern and some Southwestern states.

15. We also have reviewed the urban/rural mix of Committee members and have concerns that it is less balanced than desirable. Although several current members of the Committee representing more urban constituencies have considerable experience with rural issues and have provided this important perspective at LSGAC meetings, the members, in general, represent large urban metropolitan areas and counties or states containing densely populated urban centers. In selecting new members of the Committee, we will strive to increase the rural voice. As with geographic diversity, we will encourage rural representation on the Committee through the application process.

16. *Expertise in Homeland Security Matters.* It has been, and continues to be, our intention to work with the communications and public safety communities to ensure the reliability and security of the nation’s communications infrastructure. In line with this commitment, we will seek Committee members with specific expertise in homeland security matters, including expertise in, or responsibility for, public safety or other homeland security-type operations.

b. Modifications to Committee Operating Rules and Procedures

17. *Frequency and Location of Meetings.* Section 0.701 does not specify either the frequency or the location of Committee meetings. Presently, meetings are held bimonthly at the Commission’s facilities in Washington, D.C. Members bear all travel and other expenses associated with participation in Committee activities. To minimize the burdens of membership and encourage members to attend meetings themselves, rather than sending members of their staffs, we are revising present practice and establish that the Committee will meet on a quarterly basis, rather than a bimonthly basis. Meetings will continue to be held at the Commission’s headquarters in Washington, D.C. Limiting the number of these formal meetings will help to relieve the financial burdens of membership, since Committee members are responsible for their own travel expenses. Of course, we anticipate that the Committee may continue to work, on a less formal basis, throughout the year.

⁸ See membership criteria in present section 0.701, in general, and third membership item, in particular, recodified at 47 CFR §0.701(b).

18. *Attendance and Participation in Committee Meetings.* The present rule requires that Committee members attend a minimum of fifty percent of its yearly meetings. Under present practice, this equates to three Committee meetings a year. At present, a member that fails to comply with the attendance requirement can be removed at the discretion of the Committee Chair. As a practical matter, the rule has not been observed. The necessity for regular attendance is critical, however, to the overall mission of the Committee. We will continue to look to the Committee Chair, in consultation with the Chairman of the Commission, to enforce the attendance requirement to further the goal of continuity in Committee proceedings.

19. Section 0.701, as amended, also addresses the designation of alternates to attend meetings on behalf of Committee members. The practice of delegating participatory responsibilities to employees has been fairly common during the last six years. We have taken steps to minimize the burdens of Committee membership, in part to encourage members to participate directly in Committee meetings, rather than delegating their responsibilities to alternates.⁹ We recognize that state, local, and tribal representatives with expertise and authority have demanding schedules, and that unavoidable scheduling conflicts do occur. Nonetheless, as in the case of our Consumer Advisory Committee, we will ask Committee members to commit to attending the quarterly meetings themselves.

20. In keeping with the parameters of the intergovernmental exemption, only members of the Committee, or their designees, may attend or participate in its meetings.¹⁰ Certain others, such as members of a Committee member's staff whose presence may be required to assist that member, may attend meetings in a supporting role.

21. *Commission Oversight.* As with all other advisory committees and joint boards, the Chairman of the Commission, or Commissioner designated by the Chairman, will oversee the Committee's activities and serve as liaison between the Committee and the Commission. The Committee will continue to communicate directly with the Chief, Consumer & Governmental Affairs Bureau, concerning logistical assistance and staff support, and other matters, as warranted. In some instances, the Committee may be asked to address specific matters that build upon members' unique perspectives on a range of past and future impacts that Commission policies have, or are anticipated to have, on the particular locales or governmental entities affected. In other instances, Committee members, themselves, will identify issues for consideration. In either case, state, local, and tribal representatives will have a unique opportunity, as members of the Committee, to interface with the Commission and to provide information and guidance on a range of issues that are important to the Committee.

II. ORDERING CLAUSE

22. The rule modifications adopted constitute rules of agency organization, procedure and practice. Therefore, our modification of section 0.701 is not subject to the notice and comment and effective date provisions of the Administrative Procedure Act. *See* 5 U.S.C. § 553(b)(3)(A), (d). Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), and 303(r), Subpart G, section 0.701 of the Rules and Regulations of the Federal Communications Commission, 47 C.F.R. § 0.701, modified as set forth in the Appendix to this Order, IS ADOPTED. The rule, as modified, IS EFFECTIVE upon publication in the

⁹ *See* discussions above on attendance and on frequency and location of meetings.

¹⁰ The prohibition does not extend to individuals or groups having business before the Committee.

Federal Register.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹ See 5 U.S.C. § 553(d).

APPENDIX

Part 0 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Subpart G of Chapter 0 of Title 47 of the Code of Federal Regulations is amended in the Table of Contents and in section 0.701 by revising the title and text of section 0.701 to read as follows:

Subpart G - Intergovernmental Communication

§ 0.701 *Intergovernmental Advisory Committee.*

(a) *Purpose and term of operations.* The Intergovernmental Advisory Committee (IAC) is established to facilitate intergovernmental communication between municipal, county, state and tribal governments and the Federal Communications Commission. The IAC will commence operations with its first meeting convened under this section, as amended, and is authorized to undertake its mission for a period of two years from that date. At his discretion, the Chairman of the Federal Communications Commission may extend the IAC's term of operations for an additional two years, for which new members will be appointed as set forth in paragraph (b) of this section. Pursuant to Section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. § 1534(b), the IAC is not subject to, and is not required to follow, the procedures set forth in the Federal Advisory Committee Act. 5 U.S.C., App. 2 (1988).

(b) *Membership.* The IAC will be composed of the following 15 members (or their designated employees): 1) four elected municipal officials (city mayors and city council members); 2) two elected county officials (county commissioners or council members); 3) one elected or appointed local government attorney; 4) one elected state executive (governor or lieutenant governor); 5) three elected state legislators; 6) one elected or appointed public utilities or public service commissioner; and 7) three elected or appointed Native American tribal representatives. The Chairman of the Commission will appoint members through an application process initiated by a Public Notice, and will select a Chairman and a Vice Chairman to lead the IAC. The Chairman of the Commission will also appoint members to fill any vacancies and may replace an IAC member, at his discretion, using the appointment process. Members of the IAC are responsible for travel and other incidental expenses incurred while on IAC business and will not be reimbursed by the Commission for such expenses.

(c) *Location and frequency of meetings.* The IAC will meet in Washington, D.C. four times a year. Members must attend a minimum of fifty percent of the IAC's yearly meetings and may be removed by the Chairman of the IAC for failure to comply with this requirement.

(d) *Participation in IAC meetings.* Participation at IAC meetings will be limited to IAC members or employees designated by IAC members to act on their behalf. Members unable to attend an IAC meeting should notify the IGAC Chairman a reasonable time in advance of the meeting and provide the name of the employee designated on their behalf. With the exception of Commission staff and individuals or groups having business before the IAC, no other persons may attend or participate in an IAC meeting.

(e) *Commission support and oversight.* The Chairman of the Commission, or Commissioner designated by the Chairman for such purpose, will serve as a liaison between the IAC and the Commission and provide general oversight for its activities. The IAC will also communicate directly with the Chief, Consumer & Governmental Affairs, concerning logistical assistance and staff support, and such other matters as are warranted.

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Modification of Subpart G, Section 0.701 of the Commission's Rules

This Commission, through efforts such as the Local & State Government Advisory Committee, is committed to building and strengthening our relationships with state, local, and tribal governments. The reforms adopted here are built on six years of valuable experience gained with the LSGAC and enable the newly created Committee to continue operating with the informality and flexibility that have proven so effective.

Our revised membership criteria will ensure greater balance and diversity of representation and access to a wide range of viewpoints and expertise. In particular, the new Committee will gain stronger representation in three areas. First, the addition of homeland security expertise will facilitate the Commission's work with the national security and public safety communities. Second, increased tribal representation will enhance the Commission's opportunities to hear directly from tribal government leaders and better inform the Commission's Indian Telecommunications Initiative. Finally, enhanced rural representation will assist with the Commission's Universal Service efforts, and provide information and guidance on other matters unique to the provision of telecommunications services in rural areas.

We owe a debt of gratitude to the present Committee's members for their efforts to assure that the LSGAC provided important information and guidance to the Commission on telecommunications issues affecting local, state, and tribal interests. LSGAC service represents a significant investment of time and resources, and I salute the leadership and dedication that these members have demonstrated during the past six years.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Modification of Subpart G, Section 0.701 of the Commission's Rules

I fully support increasing the effectiveness of the Advisory Committees to the Federal Communications Commission. Today's item specifically strengthens the Intergovernmental Advisory Committee by improving the Committee's overall structure and operations. I believe that by requiring a mix of local, state and tribal representation in the Committee, we will be able to receive input from a diverse group of interests on telecommunications issues that affect each of their interests. I would also like to take this opportunity to publicly thank the members of the LSGAC for their continued service and dedication to the Committee.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Modification of Subpart G, Section 0.701 of the Commission's Rules

In this Order we adopt revisions to the rules governing the Commission's Intergovernmental Advisory Committee (IAC), formerly known as the Local and State Government Advisory Committee. The Committee has served as a significant source of information and guidance to the Commission on a range of telecommunications issues affecting state, local and tribal interests. The revisions we adopt today are designed to improve the Committee's structure and operations and facilitate the important role it plays in aiding the Commission in making its decisions.

I am encouraged that we will specifically solicit a diversity of representation and pay particular attention to those areas that are underrepresented. One of the most important aspects of this Order is that it recognizes that the Committee will benefit from greater rural representation. This will provide a stronger voice for rural America. In a similar vein, I am pleased to note that we will also increase tribal representation.

The IAC should play a vital role as we tackle the issues that are important to all Americans, both rural and urban. I support this item and look forward to working closely with the newly-constituted IAC.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Modification of Subpart G, Section 0.701 of the Commission's Rules

The Local State and Government Advisory Committee has offered guidance to the Commission on more than thirty key areas of the Commission's jurisdiction that impact the interests of other governmental entities. They consistently have provided valuable insights and information. Our deliberations are richer as a result of their efforts.

In today's decision we adopt revisions to the rules governing this advisory group. I believe that by formalizing its structure we will improve its operations. I especially am pleased that in this group's new incarnation as the Intergovernmental Advisory Committee we increase tribal representation. With this blend of insights from municipal, county, local, state and tribal representatives, I believe that we have the ingredients to develop creative solutions to promote the interests of citizens, governments and industry alike. The input of this advisory committee is critical to our deliberation, and I often wish that we could increase the representation of the various groups comprising it.

I look forward to working with the membership of the Intergovernmental Advisory Committee and building on what I hope will continue to be a dynamic and mutually beneficial relationship.

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