

When Do Interest Groups Use Electronic Rulemaking?

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ABSTRACT

This paper analyzes how electronic rulemaking is affecting the propensity of interest groups to file comments and replies at the Federal Communications Commission. The paper shows that exogenous events and a handful of issues drive filing behavior. Implications of the analysis are discussed.

Categories and Subject Descriptors

D.1.d. Computer Applications; Administrative Data Processing; Government

Keywords

E-rulemaking, administrative law, telecommunications, Federal Communications Commission.

1. INTRODUCTION

There have recently been a number of empirical papers examining the micro-detail of e-rulemaking. Most of these papers conduct an in-depth analysis of a single or very small sample of docketed proceedings or issues before an agency to determine the mechanics, mechanisms, and success of e-rulemaking. [1,2,3,4] This paper uses data on all electronic filings at the Federal Communications Commission (FCC) to examine how e-rulemaking has changed the nature and composition of filings. In this paper, the identification of broad trends in e-filings is the focus, one that may be overlooked in the micro-analysis found in other work.

2. DATA

The data used here were kindly provided the FCC Reference Information Center. Since 1999, this Office of the FCC has tracked, on a monthly basis, the number of electronic filings the FCC has received through its Electronic Comment Filings System (ECFS). Figure 1a provides a graph of the number of ECFS filings at the FCC from January 1999 to December 2004. There is a noticeable jump in the number of electronic filings in October 2004 and a smaller jump in electronic filings in October 2002. Figure 1b presents the same data, with October 2004 omitted, and the data rescaled to reflect the lower variance in electronic filings. An additional pattern is noticeable. There is another small increase in the months proceeding the September 11 terrorist attacks upon the United States, and yet another in October 2002.

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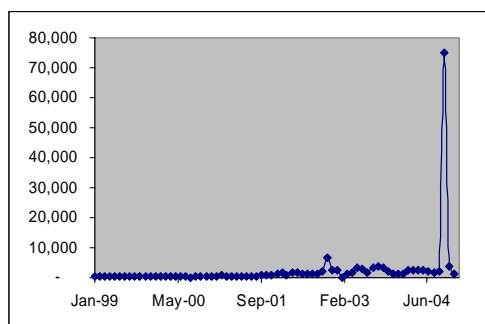


Figure 1a: Number of Monthly ECFS Filings, 1999-2004

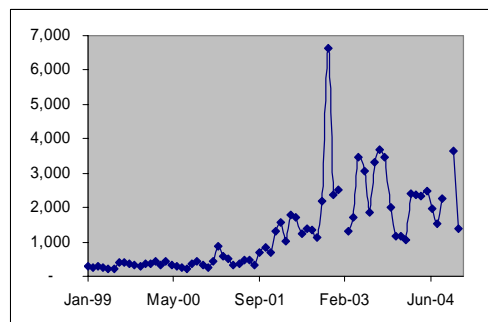


Figure 1b: Number of Monthly ECFS Filings Omitting October 2004, 1999-2004

3. DESCRIPTIVE STATISTICS

From 1999-2004, the Commission had electronic rulemaking infrastructure. Yet, except for these four events, the filings during this time look much like the filings when there was only a paper filing option. In four cases, however, there was an increase in filings. What has caused the increases in filings? The claim here is that two basic types of events will catalyze interest groups to increase their use of the electronic rulemaking infrastructure: exogenous events and issues. Exogenous events are those events which occur that are outside the control of the Commission. Issues are those very few dockets that attract interest group attention to the Commission, and thus cause a spike in filings.

In the months after September 11, the U.S. was on-guard against terrorism and worried about an Anthrax scare. Lobbyist, lawyers, and interest groups, not wishing to expose themselves to harm, shifted away from paper filings to electronic filings. These types of events are exogenous—they are out of the control of the Commission and are largely unpredictable. The spikes in filings

in October 2002 and 2004 are due to two issues that were before the Commission: The Telecommunications Protection Act (Do-Not-Call List) and the Media Ownership Rules (limiting how many media outlets and market share that one company could own in a media market). These are Issues that increase in filings.

4. STATISTICAL ANALYSIS

To examine the validity of these claims, a statistical analysis is of monthly ECFS data is conducted. To do this, two ordinary least squares regressions are run where the dependent variable is the number of ECFS filings in a given month, beginning in January 1999. We examine two main independent variables. The first independent variable, Exogenous Events, is an indicator variable which is equal to one for the months covering the three months after the September 11 attacks and the months covering the Anthrax scare (December 2001 to May 2002), and zero otherwise. It is designed to measure how these exogenous events affected ECFS filing behavior. The second variable, which is named Issues, is an indicator variable which is equal to one for the months in which the Do-Not-Call List and Media Ownership Rules (first and second review) were being considered by the Commission, and zero otherwise. It is designed to measure the effect that these issues had on ECFS filing behavior.

In addition to these variables of interest, the statistical analysis includes a constant, and a variable called Trend, which is a count variable starting with 1 in the first month of the sample and counting each additional month. This variable is designed to control for variables that are increasing over time, such as more issues before the Commission, more inherent participation by interested parties in issues, and the rise of e-advocacy and information technology over time. All months preceding the variable of interest the months with the variable of interest are used.¹ The results of the analysis are presented in Table 1.

Model 1 presents the results with the Exogenous Events variable, and Model 2 presents the results with the Issues variable. In all Models, the F-statistic shows that the coefficients are jointly statistically significant at the 99% level of confidence, despite the relatively small number of observations. The standard errors are in parentheses beneath the coefficient estimates.

In Model 1, the coefficient on Exogenous Events is both positive and statistically significant. The coefficient means that in the months after the September 11 attack, there was an increase of 671 filings per month on the ECFS system. In Model 2, only the coefficient on Issues is statistically significant. A “key” issue before the Commission results in a 6,796 increase in monthly ECFS filings. These results hold even when we include the Trend variable in the models.

¹ For example, in Model 1, we measure the impact of Terror on ECFS filing behavior. We include in the sample frame all months preceding the September 11 terror attacks (January 1999 to September 2001) and the three months immediately after the terror attacks (October 2001 to December 2001).

Table 1. Table captions should be placed above the table

Variable	Model 1	Model 2
Exogenous Events	671.27 (117.14)	
Issues		6,796.36 (2862.04)
Trend	8.03 (3.92)	68.91 (51.40)
Constant	229.08 (76.58)	-1,354.02 (1,982.71)
n	41	71
F-Statistic	50.25	6.05

5. CONCLUSIONS

A number of ideas can be taken away from the descriptive data and this analysis. First, exogenous events and issues do cause spikes in e-filings. Second, these events are quite rare. That is, during the entire six years of data presented, only two exogenous events or issues registered a significant effect on filing behavior. Third, most issues seem unaffected by e-filings rules, outside of these four instances. That is, electronic rule-making does not seem to noticeably alter filing behavior. In all other instances, e-filing looked very much like the paper filing regime before it. That leads to a fourth conclusion, that a “build-it-and-they-will-come” attitude for IT infrastructure development will likely not work. Finally, we must be careful about what we learn from empirical studies of e-rulemaking. A sample frame that includes only dockets with many filings may be sampling only outlier dockets. That is, the lessons we learn from these studies may not be generalizable.²

6. REFERENCES

- [1] David Schlosberg, Stephen Zaverstoski, and Stuart Shulman (May 2005), “To Submit a Form or Not to Submit a Form, that is the (Real) Question”: Deliberation and Mass Participation in U.S. Regulatory Rulemaking,” Presented at Stanford Online Deliberation Conference in 2005
- [2] Stuart Shulman, “Whither Deliberation? Mass e-Mail Campaigns and U.S. Regulatory Rule-making,” Paper Presented at the Institute for Public Administration for Canada, December 13-14, 2004
- [3] J. Woody Stanley and Christopher Weare, “The Effects of Internet Use on Political Participation: Evidence from an Agency Online Discussion Forum,” *Administration & Society*, Vol. 36, No. 5, 503-527 (2004),
- [4] Stuart Schulman, Lisa Thrane, and Mack Shelley, “Trust in Government and the Role of public Participation in Rulemakings with Large Numbers of Public Comments,” Paper Presented at the d.go 2006 Conference.
- [5] John M. de Figueiredo. “E-Rulemaking: Bringing Data to Theory at the Federal Communications Commission,” *Duke Law Journal* (2006), forthcoming.

² The arguments presented in this paper are further developed in [5].