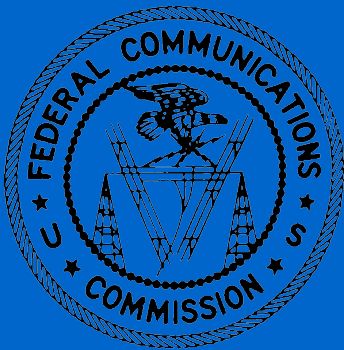




連邦通信委員会の公開文書の解き方

ミラー・ジェームス

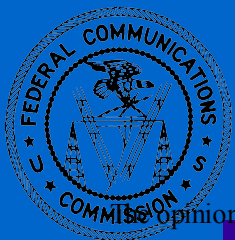
マンسفールドフェロー



電波部電波政策課

否認の告示...

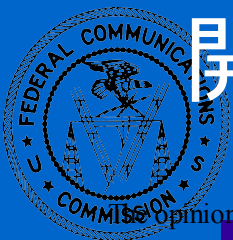
- The opinions expressed are those of the author and do not necessarily represent the views of the Federal Communications Commission or the United States Government; The Maureen and Mike Mansfield Foundation; or any Japanese Ministry or the Government of Japan.



(米)行政制度の要綱

プレゼンの流れ

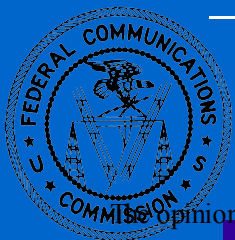
- 法的枠組みとの文書作成
 - 行政手続法とFCCの手続省令
 - 行政裁量と手続法による遵法性の擁護
 - 行政手続法
 - FCCの省令
- 行政組織と文書作成
- 文書の見本を「概観」して、FCCの公開文書の「読み解き方」を身につける



(米)行政制度の要綱

(米)行政制度の要綱

- 行政立法手続法 (APA)「執行命令」
 - 公正な行政行為を定める
 - 省令などの作成手続きを規定する
 - 行政規則の制定
 - Adjudicationの範疇 (裁定・裁決)
 - Rulemakingの範疇
 - “Legislative Rule”(法規命令)
 - 法律効果があり、手続きに基づくもの
 - “Non-Legislative Rule”(行政命令)
 - 現行法規の解釈、ポリシー等
 - 連邦行政の立法はAPAに従う義務がある。



(米)行政制度の要綱

FCC規則制定の要綱

- 規則制定の手続

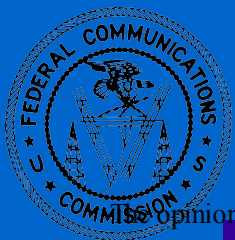
- Proceedingsの開始

- FCCの職権による場合

- Notice of Inquiry (規則制定に直接つながらない、行政命令ルート)
 - Notice of Proposed Rulemaking (判決により規則が制定できる、法規命令ルート)

- 外部から依頼する場合

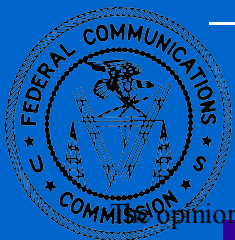
- Petition for Rulemaking (法規政策・規則制定の依頼)
 - Petition for Declaratory Ruling (宣言的・確認審決の依頼
一裁定依頼)



(米)行政制度の要綱

行政手続法の553(b)条

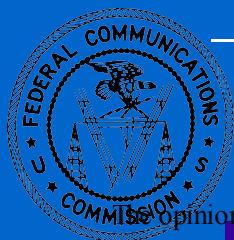
- (米)行政手続法553(b)条の“General Notice of proposed rule making”による公開文書の必要条件
 - 政策策定についての日時、開催地、内容を明言する義務
 - 政策立案の拠り所にする根拠法を明言する義務
 - 規則の内容、対象物、及び条文をを明言する義務
- FCC手続省令1.413(d),(e)条の要件
 - 審議録の説明
 - コメント・反論の期間・提出締切



(米)行政制度の要綱

行政手続法の553(c)条

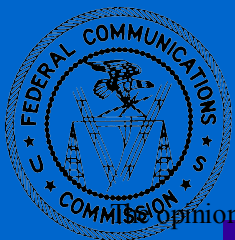
- (米)行政手続法553(c)条の“General Notice of proposed rule making”による公開文書の必要条件(FCC省令§§1.415、1.419 *Comments and replies*)
 - 規則制定手続に国民を参加させること
 - “submission of written data, views, or arguments” (ECFS、EDOCS)
 - 規則制定についての根拠・趣旨を簡潔な概要を公開すること
 - 制定する規則が有効にする30日間前に公開文章を告示すること



(米)行政制度の要綱

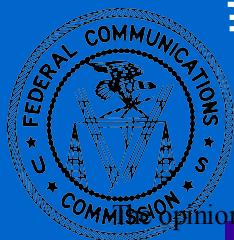
行政手続法の553(e)条

- (米)行政手続法553(e)条関連の公開文書
 - ”Any interested person may petition for the issuance, amendment or repeal of a rule or regulation.”
 - 政策策定の請願 (§ 1.401、1.405 Petitions for rule making.)
 - 再審議の請願 (*§1.429 Petition for reconsideration.*)
 - (*c*) “shall state with particularity”



その他の連邦法律法

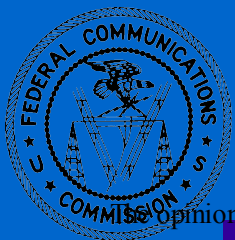
- “*Ordering Clauses*”
 - *Paperwork Reduction Act of 1995 (PRA)*
 - 情報収集の義務を導入することがある場合
 - *Office of Management and Budget (OMB)*が政策立案をレビュー
 - *Regulatory Flexibility Act of 1980*
 - *regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”*
- 告示、公示、公告などは*Federal Register* (官報) で公開
 - ※*United State Code (USC) / Code of Federal Regulations (CFR)*



(米)行政制度の要綱

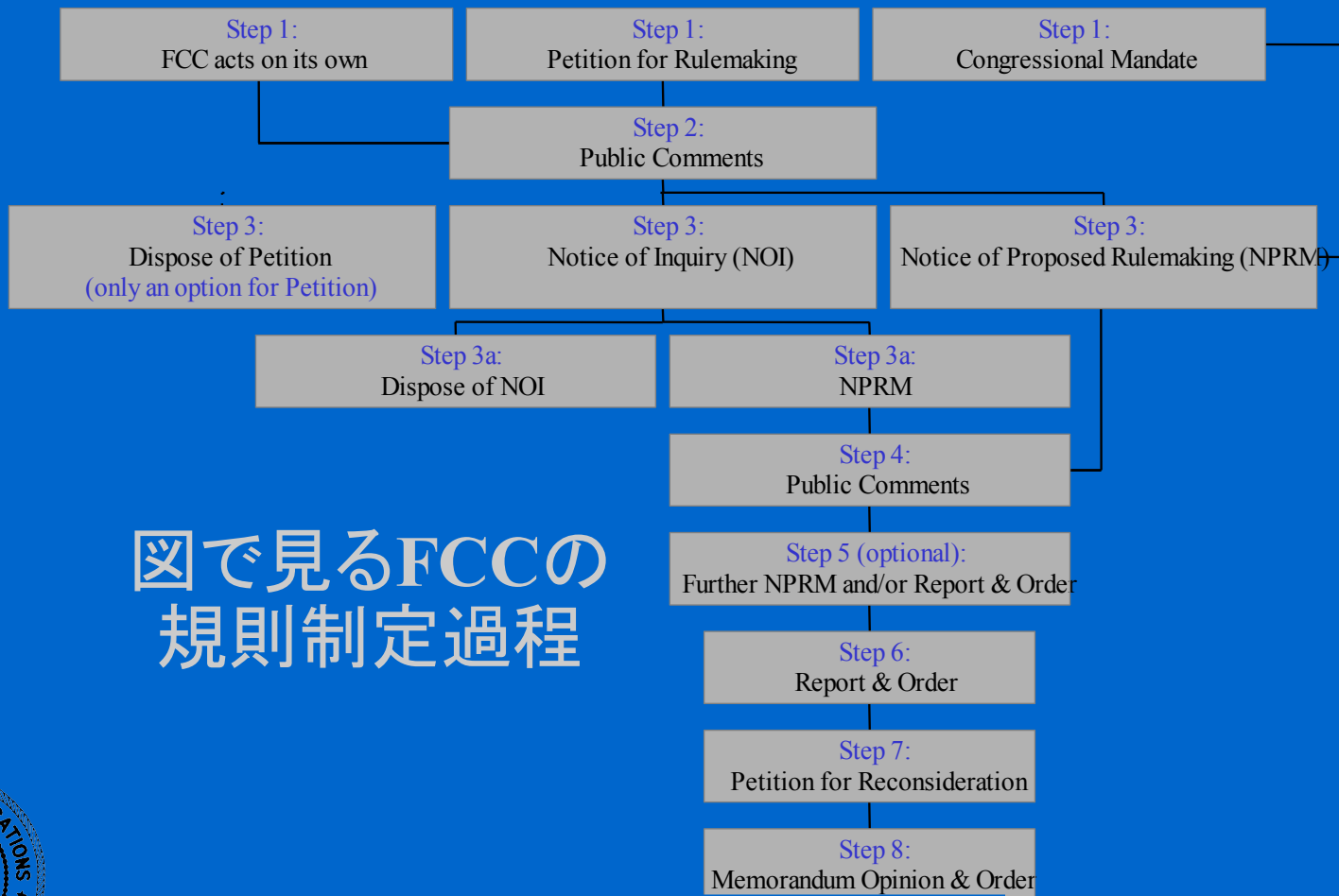
控訴への注意点

- Federal Court (訴訟提起)
- 司法の審議判定基準では、手続の遵法性を重視
- 専決且つ非合理的根拠なしのルール (専断的判決) は許されない
- “Chevron Deference” という判定基準：
 - 恣意的・独断専行 ”arbitrary”
 - 急変的 ”capricious”
 - 明確に法律に判ずる作用 ”manifestly contrary to the statute”
 - 裁判所は行政庁の合理的・妥当な解釈に介入しない ”a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.”

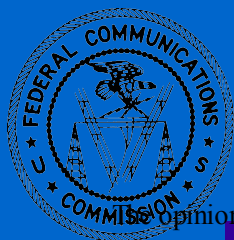


(米)行政制度の要綱

FCC規則制定の全体像



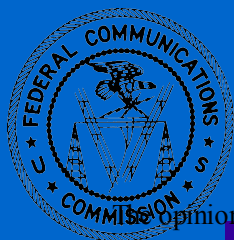
図で見るFCCの規則制定過程



(米)行政制度の要綱

FCCの組織と文書作成過程

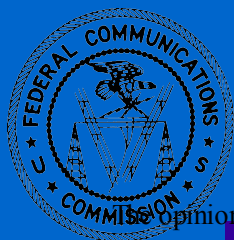
- 全職員数、約2000人
- 局・部・室の組織の通例
 - FRONT OFFICE(部長室)
 - 副部長、次長、部長補佐、顧問、スタッフ等
 - ポリシー課
 - 規則・ポリシーの政策策定業務
 - 免許課
 - 産業組織・技術課



(米)行政制度の要綱

FCCの組織と文書作成過程

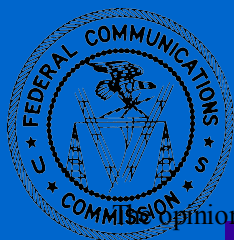
- 導入の審議
 - 開始の根拠作用
 - 告示とコメント作用
 - コメント期間後のスタッフまたは委員とのエクスパーテ
 - 議事録の審議(スタッフ、部または委員)
- 第一期
 - スタッフによる”options memo/recommendation”
 - 係・課レベルによる審議
 - 部レベルによる審議
 - 委員長による審議で方向性を決定



(米)行政制度の要綱

文書作成審議の流れ

- 文書の作成
 - 弁護士・専門のスタッフ
 - 係り・課長、部長・FOによるレビュー
- 委員の稟議・聴聞会による審議
 - 委員長によるレビュー
 - 委員に回議する
 - (場合によりサンシャイン告示)
- 投票
 - 賛成、意義、同意意見
 - 各委員の陳述書
 - 成立後の編成
 - 公開

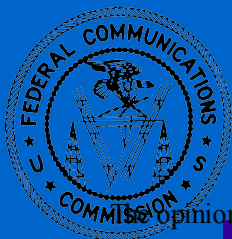


(米)行政制度の要綱

文書の見本で理解する解き方

- ドケット (Docket) の議事録番号を確認

| Federal Communications Commission | | FCC 04-285 |
|---|------------------|------------------------------------|
| Before the Federal Communications Commission Washington, D.C. 20554 | | |
| In the matter of |) | |
| Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems |)))) | ↑ ET Docket No. 98-153 |
| SECOND REPORT AND ORDER AND SECOND MEMORANDUM OPINION AND ORDER | | |
| Adopted: December 15, 2004 | | Released: December 16, 2004 |
| By the Commission: Chairman Powell issuing a statement. | | |

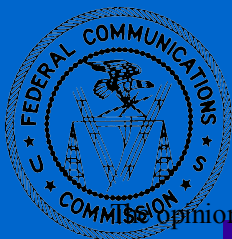


(米)行政制度の要綱

文書の見本で理解する解き方

- FCC公開文書番号を確認

| Federal Communications Commission | | FCC 04-285 | |
|---|------------------|------------------------------|------------------------------------|
| Before the Federal Communications Commission Washington, D.C. 20554 | | | |
| In the matter of |) | ET Docket No. 98-153 | |
| Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems |)))) | | |
| SECOND REPORT AND ORDER AND SECOND MEMORANDUM OPINION AND ORDER | | | |
| Adopted: December 15, 2004 | | | Released: December 16, 2004 |
| By the Commission: Chairman Powell issuing a statement. | | | |



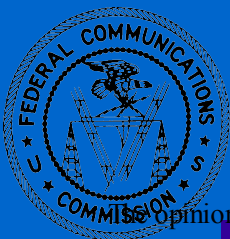
(米)行政制度の要綱

文書の見本で理解する解き方

- 希望の

Petition、Comment、NPRM、Report & Orderなどかどうかを確認

| Federal Communications Commission | | FCC 04-285 |
|---|---|------------------------------------|
| Before the Federal Communications Commission Washington, D.C. 20554 | | |
| In the matter of |) | ET Docket No. 98-153 |
| Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems |) | |
| |) | |
| |) | |
| SECOND REPORT AND ORDER AND SECOND MEMORANDUM OPINION AND ORDER | | |
| Adopted: December 15, 2004 | | Released: December 16, 2004 |
| By the Commission: Chairman Powell issuing a statement. | | |

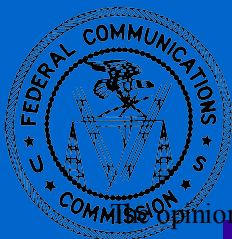


(米)行政制度の要綱

文書の見本で理解する解き方

- 公開日付を確認

| Federal Communications Commission | | FCC 04-285 |
|---|---|------------------------------------|
| Before the Federal Communications Commission Washington, D.C. 20554 | | |
| In the matter of |) | ET Docket No. 98-153 |
| Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems |) | |
| |) | |
| |) | |
| SECOND REPORT AND ORDER AND SECOND MEMORANDUM OPINION AND ORDER | | |
| Adopted: December 15, 2004 | | Released: December 16, 2004 |
| By the Commission: Chairman Powell issuing a statement. | | |

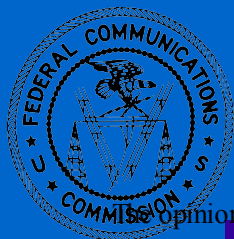


(米)行政制度の要綱

文書の見本で理解する解き方

- 目次がある場合、節で参照する

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| B. Non-UWB peak power emission limits in the 5925-7250 MHz and 16.2-17.7 GHz bands..... | | 9 |
| C. Vehicular radar systems in the 22-29 GHz band..... | | 16 |
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| F. Other issues raised in the comments..... | | 29 |
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| 4. Rights of incumbent cellular and PCS licensees..... | | 40 |
| B. Interference to C-Band Fixed Satellite Service..... | | 43 |
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| VI. CHANGES TO THE REGULATIONS..... | | Appendix A |
| VII. PARTIES FILING COMMENTS AND REPLY COMMENTS TO THE FNPRM..... | | Appendix B |

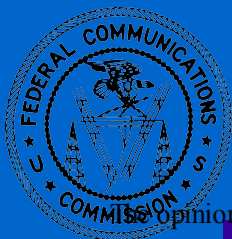


(米)行政制度の要綱

文書の見本で理解する解き方

- Introduction
又は
Executive
Summaryで
概要をつか
める

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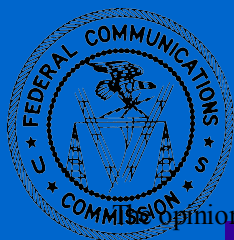


(米)行政制度の要綱

文書の見本で理解する解き方

- 意見の提出者の一覧

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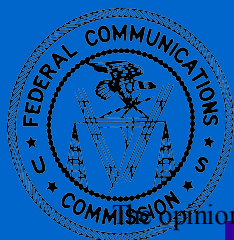


(米)行政制度の要綱

文書の見本で理解する解き方

- 改正の規則は本文及び Appendixといわれる文書の後半の部分に ...

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(米)行政制度の要綱

FCCの組織と文書作成過程

- 文書は内容ごとにセクションに分けてある
- 各セクションが、
 - イントロ
 - コメントの要項
 - 結論
 - 等
- と部分に分けることが通例
- ※概略する場合は、イントロと判決のところを読めば概要を把握できるのでそこを狙う

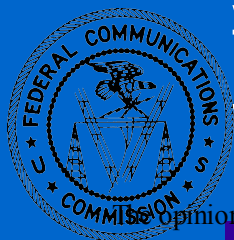
D. Clarification of existing non-UWB peak power emission limits

50. In its petition for reconsideration of the *I*st R&O, MSSSI requested 「...」

51. Comments/discussion. MSSSI requests an interpretation of Section 15.35(b) of the Commission's rules that a PDCF does not apply above 1 GHz, stating that this would permit it to commercially deploy its wideband devices. 「...」

52. We are denying the request from MSSSI for an interpretation of Section 15.35(b) of the Commission's rules that a PDCF does not apply above 1 GHz. MSSSI made a similar request for interpretation in its Petition for Reconsideration of the *I*st R&O. However, the Commission was clear in the *MO&O* that a PDCF does apply to the measurement of 「...」

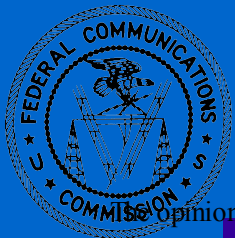
E. UWB definition



(米)行政制度の要綱

Thank You!

ご清聴、どうも有り難う
ございました！



(米)行政制度の要綱

Opinions expressed are those of the author and do not necessarily represent the views of the Federal Communications Commission or the United States Government; The Maureen and Mike Mansfield Foundation; or any Japanese Ministry or the Government of Japan.