



Best Practices for Using Video Teleconferencing for Hearings

Committee on Adjudication

Draft Recommendation | October 28, 2014

1 Agencies conduct thousands of administrative hearings every day, but the format of the
2 hearing, whether face-to-face or by video, has not been analyzed in any systematic way. Some
3 agencies have provided hearings by video teleconferencing technology (VTC) for decades and
4 have robust VTC programs. These programs strive consistently to provide the best hearing
5 experience, even as technology changes. Other agencies have been reluctant to depart from
6 traditional formats. Some are skeptical that hearings may be conducted as effectively via VTC
7 as they are in person. Others are uncertain about how to implement VTC hearings. But all
8 could benefit from an impartial look at the available technologies for conducting adjudications.

9 The varied agency experiences and concerns reflect the tension between long-
10 established values and technological innovations. Administrative hearings must be conducted
11 in a manner consistent with due process and the core values of fairness, efficiency, and
12 participant satisfaction reflected in cases like *Goldberg v. Kelly*¹ and *Mathews v. Eldridge*.² At
13 the same time, agencies that have explored the use of technological alternatives have achieved
14 benefits in the effective use of decisionmaking resources and reduction in travel expenses.³
15 Upholding core values and making the best use of technology—both in hearings and related

¹ 397 U.S. 254 (1970).

² 424 U.S. 319 (1976). *See also infra* note 8.

³ In fact, agencies have been directed to increase efficiency through their use of technology. *See* Exec. Order No. 13,589, 76 Fed. Reg. 70,861 (Nov. 15, 2011) (directing agencies “to devise strategic alternatives to Government travel, including . . . technological alternatives, such as . . . video conferencing” and to “assess current device inventories and usage, and establish controls, to ensure that they are not paying for unused or underutilized information technology (IT) equipment, installed software, or services”).



16 proceedings such as initial appearances, pre-hearing conferences, and meetings—is the
17 challenge this recommendation seeks to meet.

18 In 2011, the Administrative Conference adopted Recommendation 2011-4, *Agency Use*
19 *of Video Hearings: Best Practices and Possibilities for Expansion*.⁴ Recommendation 2011-4 had
20 two main purposes. First, it identified factors for agencies—especially agencies with high
21 volume caseloads—to consider as they determined whether to implement video hearings.⁵
22 Second, it offered several best practices agencies should employ when using video hearings.⁶
23 The recommendation concluded by encouraging agencies that have decided to conduct VTC
24 hearings to “[c]onsult the staff of the Administrative Conference of the United States . . . for
25 best practices, guidance advice, and the possibilities for shared resources and collaboration.”⁷

26 This recommendation builds on Recommendation 2011-4 by providing practical
27 guidance regarding how best to conduct VTC hearings. The Administrative Conference is
28 committed to the principles of fairness, efficiency, and participant satisfaction in the conduct of
29 hearings. When VTC is used, it must be used correctly in order to promote these principles,
30 which form the cornerstones of adjudicative legitimacy.⁸ The Conference recognizes that VTC is

⁴ See 76 Fed. Reg. 48,795 (Aug. 9, 2011), available at <http://www.acus.gov/recommendation/agency-use-video-hearings-best-practices-and-possibilities-expansion>.

⁵ Such factors include whether (1) the agency’s statute permits such use; (2) agency proceedings are conducive to VTC; (3) the outcomes of cases are not affected; (4) the budget allows such investment; (5) cost savings are expected; (6) there may be a reduction in wait time; (7) participants (e.g., judges, parties, representatives, witnesses) would find VTC beneficial; (8) there would be adequate IT personnel in place to support VTC hearings; and (9) VTC would adversely affect either representation or communication. See *id.*

⁶ Best practices include: (1) offering VTC on a voluntary basis; (2) evaluating whether use of VTC is outcome-neutral and meets the needs of users; (3) soliciting feedback from participants; (4) implementing VTC via a pilot program and evaluating that program before establishing it more broadly; and (5) providing structured training and ensuring available IT support staff. *Id.*

⁷ *Id.*

⁸ See *EF Int’l Language Schools, Inc. v. Andrea Jesse*, 2014 NLRB 708 (2014) (finding of administrative law judge “that the safeguards utilized at hearing [to take witness testimony by VTC] amply ensured that due process was not denied to” the party. In fact, “the witness’ demeanor, i.e., his appearance, attitude and manner, was easily observable [and the] entire proceeding was as spontaneous as live testimony . . . [thus, the witness’] testimony by video may be evaluated on equal footing with the testimony of witnesses appearing in person at the hearing”).



31 not suitable for every kind of hearing, but believes greater familiarity with existing agency
32 practices and awareness of the improvements in technology will encourage other agencies to
33 take up the challenge. This recommendation aims to ensure that, when agencies choose to
34 offer video hearings, they are able to provide a participant experience that meets or even
35 exceeds the in-person hearing experience.

RECOMMENDATION

36 **“Bricks and Mortar”**

37 1. Agencies should consider the various physical and logistical characteristics of their
38 hearings, including the layout of the hearing room(s) and the number and location(s) of hearing
39 participants (i.e., judge, parties, representatives, and witnesses) and other attendees, in order
40 to determine the kind of video conferencing (VTC) system to use. These general principles
41 should guide agencies’ consideration:

42 (a) Video screens should be large enough to accommodate adequate viewing of all
43 participants and attendees;

44 (b) Camera images should replicate the in-person hearing experience, including
45 participants’ ability to make eye contact with other participants and see the
46 entire hearing room(s). If interpretation services are involved, the interpreter
47 should be able to see and hear the participants clearly;

48 (c) Microphones should be provided for each participant who will be speaking
49 during the hearing;

50 (d) The speaker system should allow all participants to adequately hear the person
51 speaking. If a participant has a hearing impairment, an Americans with
52 Disabilities Act-compliant system that connects to the VTC system should be
53 provided;



54 (e) The record should be adequately captured, either by ensuring that the audio
55 system connects with a recording system, or by ensuring that the court reporter
56 can clearly see and hear the proceeding;

57 (f) Sufficient bandwidth should be provided so that the video image and sound are
58 clear and uninterrupted; and

59 (g) Each piece of equipment should be installed, mounted, and secured so that it is
60 protected and does not create a hazardous environment for participants or staff.

61 2. Agencies should ensure that the conditions in and surrounding the hearing rooms
62 allow participants to see, be seen by, and hear other participants, and to see written
63 documents and screens, as well as, or better than, if all of the participants were together in
64 person. These general principles should guide agencies' consideration in creating the best
65 hearing room conditions:

66 (a) Lighting should be placed in a way to create well-dispersed, horizontal, ambient
67 light throughout all rooms used in the proceeding;

68 (b) Noise transference should be kept to a minimum by:

69 (i) Locating hearing rooms in the inner area of the office and away from any
70 noise or vibration-producing elements (e.g., elevator shafts, mechanical
71 rooms, plumbing, and high-traffic corridors);

72 (ii) Installing solid doors with door sweeps, walls that run from floor to
73 ceiling, and sound absorption panels on the walls.

74 (c) Room décor, including colors and finishes of walls and furniture, should allow for
75 the camera(s) to easily capture the image(s).



76 **Training**

77 3. Agencies should develop training for agency staff, especially judges, who will operate
78 the VTC equipment during the hearing. Agencies should also provide a reference chart or
79 “cheat sheet” to keep with each VTC system that provides basic system operation directions
80 that operators can easily reference.

81 4. Agencies should develop advanced training for technical support staff to ensure they
82 are equipped to maintain the VTC equipment and provide support to operators, including
83 during a proceeding if a problem arises.

84 **Financial Considerations**

85 5. The capabilities and costs of VTC systems vary widely. Before purchasing or updating
86 their VTC systems, agencies should first consider their hearing needs (e.g., the needs of a
87 hearing conducted by a judge at his desk with a single party will be different than the needs of a
88 hearing conducted in a full-sized federal courtroom with multiple participants and attendees
89 present at several locations).

90 6. Once agencies have identified their hearing needs, they should consider the costs and
91 benefits of implementing, maintaining, and updating their VTC systems to suit those needs.

92 (a) Costs to be considered include those associated with purchasing, installing, and
93 maintaining the VTC system.

94 (b) Benefits to be considered include increased accessibility to hearings, increased
95 work time for judges and staff, reduced travel costs and delays, and backlog
96 reductions.

97 **Procedural Practices**

98 7. Judges should consider how to establish and maintain control of the hearing room,
99 such as by wearing robes as a symbol of authority, appearing on the screen before the parties



100 enter the room(s), requiring parties and representatives to use hand signals to indicate that
101 they would like to speak, and reminding representatives that they are officers of the court.

102 8. Agencies should install VTC equipment so that judges can control the camera at the
103 other location(s), if possible.

104 9. Agency staff should ensure that the hearing will run as smoothly as possible by
105 removing any obstacles blocking lines-of-sight between the camera and participants and testing
106 the audio before each hearing.

107 **Fairness and Satisfaction**

108 10. Agencies should periodically assess their video hearings to ensure that the use of
109 VTC is outcome neutral.

110 11. Agencies should maintain open lines of communication with the representative
111 community in order to receive feedback about representative and party satisfaction with the
112 use of VTC.

113 **Collaboration Among Agencies**

114 12. Agencies should consider sharing VTC facilities with one another in order to reduce
115 costs and increase efficiency, while maintaining a fair and satisfying hearing experience.

116 13. Agencies that conduct hearings should work with the General Services
117 Administration in procuring and planning facilities that will best accommodate the needs of
118 video hearings.

119 **Development of a Video Hearings Handbook**

120 14. The Office of the Chairman of the Administrative Conference of the United States
121 should create a handbook on the use of VTC in hearings and related proceedings that will be
122 updated from time to time as technology changes. The handbook should be made publicly



- 123 accessible online to agencies, and include specific guidance regarding equipment, conditions,
- 124 and training that meets industry standards.