



Best Practices for Using Video Teleconferencing for Hearings

Committee on Adjudication

Proposed Recommendation | December 4-5, 2014

Proposed Amendments

This document displays manager's amendments (with no marginal notes) and additional amendments from Conference members (with the source shown in the margin).

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

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

¹ 397 U.S. 254 (1970).

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



16 expenses.³ Upholding core values and making the best use of technology—both in hearings
17 and related proceedings such as initial appearances, pre-hearing conferences, and meetings—is
18 the challenge this recommendation seeks to meet.

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

27 This recommendation builds on Recommendation 2011-4 by providing practical
28 guidance regarding how best to conduct VTC hearings **whether there are witnesses or not**. The
29 Administrative Conference is committed to the principles of fairness, efficiency, and participant

Comment [CMA1]: Morrison Amendment.
Proposed in order to clarify that the recommendation applies to all hearings (i.e., those with live witnesses and those without live witnesses).

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”).

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 use of VTC; (2) the agency’s proceedings are conducive to VTC; (3) VTC may be used without affecting case outcomes; (4) the agency’s budget allows adequate investment in VTC; (5) the use of VTC would result in cost savings; (6) the use of VTC would result in a reduction in wait time; (7) the participants (e.g., judges, parties, representatives, witnesses) would find VTC beneficial; (8) the agencies’ facilities and administration would be able to support VTC hearings; and (9) the use of VTC would not adversely affect either representation or communication. See *id.*

⁶ Best practices include (1) offering VTC on a voluntary basis; (2) ensuring that the 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.*



30 | satisfaction in the conduct of hearings. When VTC is used, it must-should be used in a manner
31 that promotes these principles, which form the cornerstones of adjudicative legitimacy.⁸ The
32 Conference recognizes that VTC is not suitable for every kind of hearing, but believes greater
33 familiarity with existing agency practices and awareness of the improvements in technology will
34 encourage broader use of such technology. This recommendation aims to ensure that, when
35 agencies choose to offer VTC hearings, they are able to provide a participant experience that
36 meets or even exceeds the in-person hearing experience.⁹

RECOMMENDATION

37 Foundational Factors

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

- 43 (a) Video screens should be large enough to accommodate adequate viewing of all
44 participants and attendees;
- 45 (b) Camera images should replicate the in-person hearing experience, including
46 participants' ability to make eye contact with other participants and see the entire
47 hearing room(s). If interpreters are involved, they should be able to see and hear the
48 participants clearly;

⁸ See *EF Int'l Language Schools, Inc.*, 2014 N.L.R.B. 708 (2014) (admin. law judge recommended decision) (finding "that the safeguards utilized at hearing [to take witness testimony by VTC] amply ensured that due process was not denied to" the party).

⁹ For greater detail about how to implement VTC hearings, see CENTER FOR LEGAL AND COURT TECHNOLOGY, *BEST PRACTICES FOR USING VIDEO FOR HEARINGS AND RELATED PROCEEDINGS* (2014).



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

51 (d) The speaker system should be sufficient to allow all participants to hear the
52 person speaking. If a participant has a hearing impairment, a system that complies with
53 the Americans with Disabilities Act and other applicable laws should be used to connect
54 to the VTC system;

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

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

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

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

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

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

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

Comment [CMA2]: Siciliano Amendment.
Agencies have limited ability to “ensure” that conditions “surrounding” the hearing rooms allow participants to see and hear. Fire trucks in the street, lawful protesters, etc., might impair auditory quality. The agency should do what it can inside (e.g., shut the windows, raise the volume of speakers, etc.), but “ensure” surrounding conditions is an unreasonable standard.



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

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

77 3. Agencies should retain technical staff to support VTC operators and maintain
78 equipment.

79 **Training**

80 4. Agencies should provide training for agency staff, especially judges, who will operate
81 the VTC equipment during the hearing. Agencies should also provide a reference chart or
82 “cheat sheet” to keep with each VTC system that provides basic system operation directions
83 that operators can easily reference, as well as a phone number (or other rapid contact
84 information) for reaching technical staff.

Comment [CMA3]: Farina Amendment.
Operating directions are great, but if something goes unexpectedly wrong, there’s nothing like being able to reach a tech person immediately.

85 5. Agencies should provide advanced training for technical support staff to ensure they
86 are equipped to maintain the VTC equipment and provide support to operators, including
87 during a proceeding if a problem arises.

88 **Financial Considerations**

89 6. The capabilities and costs of VTC systems vary widely. Before purchasing or updating
90 their VTC systems, agencies should first consider their hearing needs (e.g., the needs of
91 hearings conducted by judges at their desks with a single party will be different than the needs
92 of hearings conducted in full-sized federal courtrooms with multiple participants and attendees
93 present at several locations) both now and in the future (e.g., the bandwidth needed today may
94 be different than the bandwidth needed tomorrow).

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



97 (a) Costs to be considered include those associated with purchasing, installing, and
98 maintaining the VTC system; creating and maintaining the conditions necessary to allow
99 participants to see and hear each other clearly; and providing training to staff.

100 (b) Benefits to be considered include better access to justice by increased
101 accessibility to hearings, more efficient use of time for judges and staff, reduced travel
102 costs and delays, and backlog reductions.

103 **Procedural Practices**

104 8. Judges should consider how to establish and maintain control of the hearing room,
105 such as by wearing robes as a symbol of authority, appearing on the screen before the other
106 participants enter the room(s), requiring parties and representatives to use hand signals to
107 indicate that they would like to speak, and reminding representatives that they are officers of
108 the court.

109 9. Agencies should install VTC equipment so that judges can control the camera at the
110 other location(s), if possible.

111 10. Agency staff should ensure that the hearing will run as smoothly as possible by
112 removing any obstacles blocking lines-of-sight between the camera and participants and testing
113 the audio on a regular basis.

114 **Fairness and Satisfaction**

115 11. Agencies should periodically assess their VTC hearings program to ensure that the
116 use of VTC produces outcomes that are comparable to those achieved during in-person
117 hearings.

118 12. Agencies should maintain open lines of communication with representatives in
119 order to receive feedback about ~~representative and party satisfaction with~~ the use of VTC.



120 | Post-hearing surveys or other appropriate methods should be used to collect information about
121 | the experience and satisfaction of participants.

Comment [CMA4]: Farina Amendment.
The agency should hear from the parties directly, and not rely only on representative feedback which may not adequately reveal laypeople's experience.

122 | **Collaboration Among Agencies**

123 | 13. Agencies should consider sharing VTC facilities and expertise with each other in
124 | order to reduce costs and increase efficiency, while maintaining a fair and satisfying hearing
125 | experience.

126 | 14. Agencies that conduct hearings should work with the General Services
127 | Administration (GSA) in procuring and planning facilities that will best accommodate the needs
128 | of VTC hearings.

129 | **Development of a Video Teleconferencing Hearings Handbook**

130 | 15. The Office of the Chairman of the Administrative Conference of the United States
131 | should create a handbook on the use of VTC in hearings and related proceedings that will be
132 | updated from time to time as technology changes. The handbook should reflect consultation
133 | with GSA and other agencies with VTC hearings expertise. It should be made publicly accessible
134 | online to agencies, and include specific guidance regarding equipment, conditions, ~~and~~ training
135 | that meets industry standards, and methods for collecting feedback from participants.

Comment [CMA5]: Farina Amendment.
Especially with GSA's help, it should be possible to provide guidance on how to use digital and conventional means of getting good substantive quality, and a decent quantity, of feedback from participants.