



Best Practices for Using Video Teleconferencing for Hearings

Committee on Adjudication

Proposed Recommendation | December 4-5, 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 conduct VTC hearings.⁵ Second,
22 it offered several best practices agencies should employ when using VTC hearings.⁶ The
23 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 in a manner that promotes these principles, which
30 form the cornerstones of adjudicative legitimacy.⁸ The Conference recognizes that VTC is not

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.*

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).



31 suitable for every kind of hearing, but believes greater familiarity with existing agency practices
32 and awareness of the improvements in technology will encourage broader use of such
33 technology. This recommendation aims to ensure that, when agencies choose to offer VTC
34 hearings, they are able to provide a participant experience that meets or even exceeds the in-
35 person hearing experience.⁹

RECOMMENDATION

36 Foundational Factors

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 entire
46 hearing room(s). If interpreters are involved, they should be able to see and hear the
47 participants clearly;

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

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).



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

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 can
56 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); and

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

78 **Training**

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

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

86 **Financial Considerations**

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

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

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



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

101 **Procedural Practices**

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

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

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

112 **Fairness and Satisfaction**

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

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

118 **Collaboration Among Agencies**

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



122 14. Agencies that conduct hearings should work with the General Services
123 Administration (GSA) in procuring and planning facilities that will best accommodate the needs
124 of VTC hearings.

125 **Development of a Video Teleconferencing Hearings Handbook**

126 15. The Office of the Chairman of the Administrative Conference of the United States
127 should create a handbook on the use of VTC in hearings and related proceedings that will be
128 updated from time to time as technology changes. The handbook should reflect consultation
129 with GSA and other agencies with VTC hearings expertise. It should be made publicly accessible
130 online to agencies, and include specific guidance regarding equipment, conditions, and training
131 that meets industry standards.