

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Encouraging the Provision of New Technologies) GN Docket No. 18-22
and Services to the Public)

NOTICE OF PROPOSED RULEMAKING

Adopted: February 22, 2018

Released: February 23, 2018

Comment Date: [45 days after publication in the Federal Register]

Reply Date: [75 days after publication in the Federal Register]

By the Commission: Chairman Pai and Commissioners O’Rielly and Carr issuing separate statements; Commissioner Clyburn approving in part, dissenting in part, and issuing a statement; Commissioner Rosenworcel dissenting and issuing a statement.

I. INTRODUCTION

1. Technological advancements have continually expanded the boundaries of communications services, whether they have been based in wireless or wired technologies. These advances have been vital in fueling the economic engine of the United States and benefiting consumers. The Commission has a long history of facilitating the introduction of new technologies and services, although at times, the regulatory path from technological breakthrough to authorization of service has been long and arduous. The Commission is committed to improving the process for enabling the introduction of new technologies and services to the public.

2. In this Notice of Proposed Rulemaking (NPRM), the Commission proposes guidelines and procedures to implement section 7 of the Communications Act of 1934, as amended.¹ By this action, the Commission aims to ensure that new technologies and services that serve the public interest can develop and be made available to the public on a timely basis.

II. BACKGROUND

3. Section 7, entitled “New Technologies and Services,” reads in its entirety as follows:

(a) It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest.

(b) The Commission shall determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed. If the Commission initiates its own proceeding for a new

¹ 47 U.S.C. § 157 (Communications Act § 7).

technology or service, such proceeding shall be completed within 12 months after it is initiated.²

4. Section 7 was added to the Communications Act in 1983.³ Since then, the Commission has considered its provisions in a handful of cases.⁴ Although section 7 does not define the terms “petition” or “application,” the Commission has applied section 7 to petitions for rulemaking and waiver, tariff filings, and applications for radio licenses for a variety of radio-based and wired services. However, the Commission has not adopted rules or guidance describing how it would implement section 7.

5. Section 7 aside, the Commission has pursued various programs and policies throughout its history to promote the introduction of new technologies and services, particularly in radio-based services. For instance, the Commission has promoted innovation through its long-standing experimental licensing program under Part 5 of the Commission’s rules.⁵ Begun in 1939,⁶ this program has evolved significantly through the years. The Commission recently modified those rules to include a program license for eligible entities that would allow them to conduct multiple experiments under one license. And the Commission now may designate innovation zones—a specified geographic area with pre-authorized conditions, such as frequency band, maximum power, etc.—where multiple program licensees may conduct experiments.⁷ Also, for several years in the 1990s, the Commission conducted the Pioneer’s Preference Program, in which it provided preferential treatment in our radio licensing processes for parties that made significant contributions to the development of new spectrum-based services or to the development of a new technology that substantially enhanced an existing spectrum-based service.⁸ In

² Communications Act § 7.

³ Pub. Law No. 98-214, § 12, 97 Stat. 1471 (1983).

⁴ See *Hye Crest Management, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 332, 335 (1991) (by waiver of various allocation and service rules, the Commission granted a license to construct a video distribution system in the 28 GHz band that it found to be “consistent with the statutory mandate of Section 7 of the Communications Act”); *Southwestern Bell Telephone Co. Revisions to Tariff FCC No. 6*, Memorandum Opinion and Order, 6 FCC Rcd 3760, 3764 (1991) (the reference to “new technology or service” in section 7(b) “cannot be interpreted to endorse methods for the provision of existing services at additional locations or the continued use of older, outmoded technologies”); *TelQuest Ventures, LLC*, Memorandum Opinion and Order, 16 FCC Rcd 15026, 15037 (2001) (a proposal to offer “an additional DBS service option” did not qualify as a “new service” under section 7); *Applications for License and Authority to Operate in the 2155-2175 MHz Band*, Order, 22 FCC Rcd 16563 (2007) (dismissing the application of M2Z to provide a national broadband radio service, finding that the proposal did not fall within Section 7 because the proposed broadband service and technologies to be used were already in use by other carriers in other frequency bands, often at faster speeds than proposed by M2Z), *affirmed*, *M2Z Networks, Inc. v. FCC*, 558 F.3d 554 (D.C. Cir. 2009) (*M2Z v. FCC*). See also *1998 Biennial Regulatory Review – Testing New Technology*, Policy Statement, 14 FCC Rcd 6065 (1999) (expediting application and waiver processing for experimental testing and development of new non-radio technologies). Section 7 issues also have been considered on delegated authority. See, e.g., *Celtronix Telemetry, Inc.*, Order on Reconsideration, 16 FCC Rcd 16614 (WTB 2001) (rejecting argument that Section 7 goal of promoting new technologies and services justified grant of interim operating authority; Bureau determined that grant would not serve the public interest).

⁵ See 47 CFR Part 5.

⁶ See Federal Communications Commission Silver Anniversary Report For Fiscal Year 1959 at 179, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-308682A1.pdf.

⁷ *Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission’s Rules and Streamlining Other Related Rules; 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET)*, ET Docket Nos. 10-236 and 06-155; Report and Order, 28 FCC Rcd 758 (2013); Second Report and Order, 31 FCC Rcd 7529 (2016); see 47 CFR §§ 5.301-5.313.

⁸ See *Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services*, GEN Docket No. 90-217, Report and Order, 6 FCC Rcd 3488 (1991); *recon. granted in part*, Memorandum Opinion and Order, 1 FCC Rcd 1808 (1992); *further recon. denied*, Memorandum Opinion and Order, 8 FCC Rcd 1659

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addition, through the Part 15 rules permitting unlicensed operations, the Commission has enabled the development of significant technical innovation for devices used on an unlicensed basis including, for example, Wi-Fi, Bluetooth, Zigbee, and a wide variety of other technologies. Further, through implementation of “flexible use” licensing policies for many wireless services begun in the 1990s, the Commission has enabled the rapid and ongoing evolution of new technologies and services and their speedy deployment to the public without the need for any additional Commission action.

III. DISCUSSION

6. In this NPRM, we propose to adopt rules describing guidelines and procedures to implement the stated policy goal of section 7 “to encourage the provision of new technologies and services to the public.” Although the forces of competition and technological growth work together to enable the development and deployment of many new technologies and services to the public, the Commission has at times been slow to identify and take action to ensure that important new technologies or services are made available as quickly as possible. The Commission has sought to overcome these impediments by streamlining many of its processes, but all too often regulatory delays can adversely impact newly proposed technologies or services.

7. For example, outdated technical rules and regulations can require proponents of new technologies or services to either seek a waiver of those rules or petition the Commission to conduct a rulemaking. The legal and administrative requirements for conducting rulemaking proceedings can often result in those proceedings extending over long periods of time, and they also are subject to judicial review. Often, competitors petition to deny or oppose the introduction of new technologies or services that may have a negative economic effect on their own service but would otherwise provide significant public interest benefits if the Commission moved quickly to allow the new technologies or services to be offered. Delays can result when the Commission needs to seek more information from stakeholders, perform technical analyses or testing, and/or consult with and reach consensus with our Federal partners on potential interference to Federal communications systems. Sometimes the problem is simply regulatory inertia. This can have many causes, including unfamiliarity with the proposed technology or service. At times, these delays can deny the public the benefits of and opportunities provided by new technological choices and new services, and inventors and entrepreneurs are often left in limbo with little progress to show for their creative efforts.

8. Section 7 reflects clear Congressional intent to encourage and expedite provision of technological innovation that would serve the public interest. To better align purpose and practice, we propose a set of rules that will allow the Commission to effectively breathe life into section 7. As noted above, this law applies to new technologies or services proposed to be permitted in a petition or application, as well as to Commission-initiated proceedings for new technologies and services.

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(1993). In October 1993, the Commission initiated a review of the pioneer's preference rules. *See Review of Pioneer's Preference Rules*, ET Docket No. 93-266, Notice of Proposed Rule Making, 8 FCC Rcd 7692 (1993); First Report and Order, 9 FCC Rcd 605 (1994), *recon. denied*, Memorandum Opinion and Order, 9 FCC Rcd 6837 (1994); Second Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 4523 (1995), *recon. denied*, Memorandum Opinion and Order, 11 FCC Rcd 2468 (1996); Third Report and Order, 10 FCC Rcd 13183 (1995), *recon. granted*, Memorandum Opinion and Order, 11 FCC 2468 (1996); Order, 12 FCC 14006 (1997), *recon. denied*, Memorandum Opinion and Order, 13 FCC 11485 (1998), *appeal granted*, *Qualcomm Incorporated v. FCC*, D.C. Cir. No. 98-1246 (order issued July 23, 1999); *see also Review of the Pioneer's Preference Rules; Amendment of the Commission's Rules to Establish New Personal Communications Services*, ET Docket No. 93-266 and GEN Docket No. 90-314, Memorandum Opinion and Order on Remand, 9 FCC Rcd 4055 (1994).

The program was discontinued in 1997 by Congressional action, following the advent of the auctioning of wireless licenses. *Dismissal of All Pending Pioneer's Preference Requests and Review of the Pioneer's Preference Rules*, ET Docket No. 93-266, Order, 12 FCC Rcd 14006 (1997). Over the six-year period that the program was available, 140 parties applied for pioneer preferences in various services, and the Commission granted five preferences. *Id.*

A. Petitions or Applications Proposing New Technologies or Services

9. By its terms, section 7 could apply to any petition or application that includes a proposal involving the use of new technologies and services. Accordingly, in this NPRM we propose to interpret section 7 to include petitions for rulemaking or waiver of the Commission's rules as well as applications for authorization of any type of technology or service within the Commission's statutory purview, whether radio-based, wired, or otherwise. We also propose to interpret section 7 to apply to any petitions or applications that properly could be resolved either by the Commission or by any Bureau or Office pursuant to delegated authority.⁹ Whether the Commission itself, or a particular Bureau or Office acting on delegated authority, would address the section 7-related issue would depend on the particular filing, the nature of the request, and the kind of decision(s) and course(s) of action regarding the proposed new technology or service that may be deemed appropriate under the circumstances.¹⁰

10. We propose adopting a new subpart in Part 1 that sets forth specific procedures and timetables for action with respect to requests in petitions or applications for section 7 consideration. These procedures and timetables are designed to ensure that the Commission or Bureau/Office identifies and moves swiftly to promote new technologies and services that are in the public interest. These new rules would not replace or substitute for the Commission's existing rules for processing petitions and applications (e.g., the Part 1 rules for rulemaking proceedings and for applications involving common carriers or wireless radio services,¹¹ the Part 25 rules for satellite service applications,¹² the Part 73 and 74 rules for broadcast service applications,¹³ among many other rule parts dealing with applications). Instead, they would specify additional steps to ensure that timely decisions are made on section 7 requests suited to serve the public interest.

11. Section 7 establishes a timeline by which the Commission must determine whether a new technology or service proposed in a petition or application is in the public interest—i.e., one year after a petition or application that proposes a new technology or service is filed.¹⁴ However, the statute does not provide clear guidance about how to evaluate requests for consideration under section 7, nor does it prescribe what form of action the Commission must take when making a public interest finding about the proposed new technology or service. The rules that we propose, described below, are designed to provide such guidance and would ensure that any petition or application that includes a section 7-related request is evaluated under a coherent and consistent set of procedures.

12. *Filing Requirements and Related Factors.* We propose specific filing requirements for petitions and applications that include a request for section 7 consideration. As noted above, while the existing procedures for any particular petition or application would remain applicable, the voluntary inclusion of a section 7 request would require that additional steps be taken to address whether a new technology or service is being proposed that would serve the public interest and, if so, what specific

⁹ Given that the goal of Section 7 is to promote speedy consideration of the public interest benefits of new technologies or services, decisions made on delegated authority often may be the quickest means of achieving this goal.

¹⁰ A section 7 request does not alter existing policies or rules as to whether Commission-level action would be required with respect to a particular application or petition proposing a new technology or service. Petitions or applications raising issues that require Commission action would be addressed by the Commission.

¹¹ See Part 1, subparts C, E, and F; 47 CFR §§ 1.399 *et seq.*, 1.701 *et seq.*, and 1.901 *et seq.*

¹² See Part 25, subpart B and F; 47 CFR §§ 25.110 *et seq.* and 25.401 *et seq.*

¹³ See Part 73, subparts A, B, D, E, F, G, I, J, and K; 47 CFR §§ 73.28 *et seq.*, 73.203 *et seq.*, 73.501 *et seq.*, 73.607 *et seq.*, 73.702 *et seq.*, 73.805 *et seq.*, 73.5002 *et seq.*, 73.6002 *et seq.*, and 73.7001 *et seq.*; and Part 74, subparts D, E, F, G, H, and L; 47 CFR §§ 74.402 *et seq.*, 74.502 *et seq.*, 74.602 *et seq.*, 74.702 *et seq.*, 74.802 *et seq.*, and 74.1202 *et seq.*

¹⁴ Communications Act § 7(b).

course of action should be taken to promote such technology or service. The Commission, or the appropriate Bureau or Office, in exercising its discretion, would make a public interest determination concerning the proposed technology or service, with any qualifying section 7 request requiring further action within one year.

13. We propose that a petitioner or applicant must expressly request consideration under section 7 at the time of the initial filing, and must include a detailed description of the proposed “new technology or service” and how it differs from existing technologies or services. In addition, the section 7 request must include both qualitative and quantitative analyses showing how such new technology or service would be in the public interest.

14. We also propose to codify a set of factors, described below, all of which the petitioner or applicant must address with respect to its section 7 request in the proceeding, and by which the Commission or the Bureau or Office will evaluate whether the proposed technology or service is “new” and would serve the public interest.

15. First, because the timeline for a Commission public interest finding regarding a section 7 request is only one year from the filing date of the petition or application that proposes a new technology or service, we propose that the petition or application include a separate section 7 request that demonstrates that the new technology or service proposed is both technically feasible and available for commercial use/application, not merely theoretical or speculative, so that the public benefits from the proposed new technology or service can be evaluated in a meaningful way and can be realized as soon as practicable.¹⁵

16. Second, to evaluate the merits of a section 7 request, we propose several categories of factors to identify whether proposed technologies or services would be considered “new.” In considering these factors, we note that determining what is “new” will not always be easy, particularly considering that technologies and services in the communications industry are often evolutionary rather than revolutionary. Petitions and applications that include a section 7 request would be required to include a sufficient demonstration that the proposed technology or service meets one or more of the specified factors. For example, if the proposed technology or service has not previously been authorized by the Commission, the section 7 request in the petition or application must explain how the function and performance of the technology or service differs in essential or fundamental respects from others that are already authorized. If the proposed technology or service would make extraordinary or truly significant enhancements to a previously-authorized technology or service, the section 7 request in the petition or application would need to specifically quantify, qualify, or otherwise explain in sufficient detail what is so new that it warrants consideration under section 7.

17. Finally, we propose that the request for section 7 consideration must show that the proposed new technology or service would be in the public interest by, for example, promoting innovation and investment, providing new competitive choices, providing new technologies that enable accessibility to people with disabilities, or meeting public demand for new or significantly improved services in unserved and underserved areas.

18. In addition, the underlying petition or application that includes the section 7 request must comply with other legal or regulatory requirements applicable to consideration of the various technical and policy issues raised in the petition or application, including, as applicable, any statutory requirements and the established licensing rules and rights of existing licensees, regulatees, or users.¹⁶ Petitions and

¹⁵ Accordingly, such proposed showing would differ from the typical showing for applications for an experimental license under Part 5, which generally are used for research and testing to establish technical feasibility and/or commercial viability.

¹⁶ For example, petitions for rulemaking shall comply with the requirement of § 1.401, and waiver requests shall comply with § 1.925 (for wireless radio services) or § 1.3 (for waivers generally) and judicial precedents (*e.g.*,

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applications, including the section 7-related proposal, shall be filed electronically using the Commission database that is appropriate for the type of petition or application being filed, and a copy also shall be sent electronically to the Chief(s) of the authorizing Bureau(s) or Office(s) (e.g., Wireless Telecommunications, Wireline Competition, International, and/or Media Bureaus) as well as the Chief of the Office of Engineering and Technology, or to an appropriate mailbox designated by them. The petitioner or applicant must make clear in the filing that it is seeking consideration under section 7.

19. The proposed technological and service factors that we propose to adopt are intended to single out for consideration and action those proposals that involve significant breakthroughs or are truly innovative, rather than those that are foreseeable or incremental outgrowths of existing technologies or services. We seek comment on these factors or other factors that would be appropriate with effective implementation of section 7 goals. What indicia should the Commission use when evaluating what would constitute a “new” technology, as distinguished from an existing or evolving technology? Similarly, we request comment on what would constitute a “new” service, as distinguished from existing services, and thus be subject to section 7 consideration.

20. *Processing and Initial Assessment.* The proposed rules would provide for processing of a section 7 request that is included as part of a petition or application as follows. When a petition or application that includes a section 7 request is filed, both the authorizing Bureau(s)/Office(s) and the Office of Engineering and Technology (OET) will review the filing and issue a public notice on both the petition/application and the section 7 request.¹⁷ OET will assemble a team of Commission staff with relevant expertise, including at least one representative from any Bureau(s) or Office(s) with subject matter expertise, to conduct an initial review to determine if the section 7 request is complete and will be accepted for filing.¹⁸ We propose that the filing date of the request for consideration under section 7, and hence the initiation of the review period under the section 7 process, will be the date that the petition/application including the section 7 request is complete as filed, and thus can be accepted for filing.¹⁹

21. *Public Notice.* A public notice will be issued after the authorizing Bureau(s)/Office(s) and the OET-led review team determines that the petition or application, including the section 7 request, is complete and ready for processing.²⁰ This review would ensure that the petition or application that includes a section 7 claim complies both with the section 7-related requirements proposed in this NPRM and the other legal or regulatory requirements applicable to the particular petition or application. This Public Notice will identify the date the request was complete as filed, as well as relevant deadlines for agency action.

22. *90-Day Determination.* Next, we propose that the OET-led team will determine whether the technology or service proposed qualifies as a new technology or service for consideration under section 7 within 90 days. To the extent appropriate or necessary, such determination could take into

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Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *ICO Global Communications v. FCC*, 428 F.3d 264, 269 (D.C. Cir. 2005); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)).

¹⁷ Accordingly, to the extent a petitioner or applicant includes a request for consideration under Section 7, this particular public notice process would replace any otherwise applicable routine or automatic issuance of a public notice of the petition or application.

¹⁸ The authorizing Bureau(s)/Office(s) would continue to be responsible for evaluating and processing the petition or application under the applicable Commission rules for the particular filing.

¹⁹ *Cf.* 47 CFR § 1.54 (petitions for forbearance must be complete as filed); *Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd 9543, 9549-53, paras. 11-15 (2009) (explaining the benefits of requiring forbearance petitions, which have a statutory deadline, to be complete as filed).

²⁰ The computation of the beginning date of the review period would follow § 1.4(b).

consideration any comments, including any oppositions, received in response to the public notice regarding the section 7 request. The OET-led team will notify the petitioner or applicant in writing of its determination within 90 days after the public notice is issued,²¹ or sooner where appropriate or practicable, and its determination will be included in the public record of the particular proceeding relating to the petition or application. This determination would promote timely Commission or Bureau/Office action to enable the provision of new technologies or services to the public that could serve the public interest.

23. If the determination is positive—that is, that the request qualifies for section 7 treatment—we propose to commit the agency to swift action, consistent with section 7, to evaluate that technology or service. Conversely, we propose not to make a negative finding binding on the agency. Because this determination too will necessarily be conducted prior to a more complete evaluation by the Commission or the Bureau/Office of the various public interest benefits associated either with the particular petition/application or the proposed technology/service, we think the Commission or Bureau/Office, which would be informed of the OET-led determination, may itself later determine that a particular petition/application’s proposed technology or service initially deemed ineligible nonetheless may ultimately merit section 7 treatment. Additionally, we seek comment on what the proper notification-and-elevation process should be before releasing the 90-day determination, whether positive or negative. For instance, should OET notify the offices of the Commissioners 48 hours in advance, or some other length of time, of a pending 90-day determination? Should two Commissioners or a majority of the Commission be required to elevate the 90-day determination to a Commission-level vote? If elevated, how can we ensure prompt voting? For example, would five calendar days from elevation be sufficient time for Commissioners to register a vote? If a quorum of commissioners registers a vote by the deadline, should Commissioners not registering a vote be marked as “not participating”? If less than a quorum of Commissioners registers a vote, should the OET-led team release the 90-day determination on its own?

24. We also propose not to entertain petitions for reconsideration or applications for review of the 90-day determination. First, the determination only guides agency process and would not in itself constitute a final Commission or Bureau/Office order, decision, report, or action with respect to the particular petition/application or the public interest regarding use of the proposed technology/service. Those public interest determinations fall squarely within the purview of the Commission or the Bureau/Office, which has the authority and responsibility to evaluate the various elements of the petition or application as well as the use of the proposed technology or service set forth in the petition or application, and to make associated public interest findings.²² Thus, the OET-led team’s evaluation of the section 7 request would merely serve as a step in the overall process of considering the proposed technology or service included in the underlying petition or application and reaching the merits of the public interest determinations. Subjecting the OET-led staff determination to immediate and formal reconsideration could have the perverse effect of slowing consideration of the more important core issues

²¹ This will provide sufficient opportunity to review, to the extent necessary, comments and replies that may be submitted with regard to Section 7 following issuance of the public notice.

²² We note that this staff assessment is akin in some respects to the Biennial Review of regulations under Section 11 of the Communications Act. 47 U.S.C. § 161. Section 11 directs that the Commission review biennially its regulations that apply to the operations or activities of any telecommunications service provider and determine whether any such regulation is no longer necessary as a result of meaningful economic competition between providers of such service. *Id.* Commission staff reviews such regulations, and any comments received in response to the public notice, and provides non-binding staff recommendations for possible Commission consideration. *See, e.g., 2012 Biennial Review of Telecommunications Regulations*, CG Docket No. 13-29, EB Docket No. 13-35, IB Docket No. 13-30, ET Docket No. 13-26, PS Docket No. 13-31, WT Docket No. 13-32, WC Docket No. 13-33, Public Notice, 28 FCC Rcd 11255 (2013) (public notice summarizing the bureaus’ and office’s staff determinations and recommendations concerning their 2012 biennial review of telecommunications regulations in accordance with Section 11(a) of the Communications Act). The D.C. Circuit has upheld the Commission’s interpretation of section 11. *See Cellco Partnership v. FCC*, 357 F.3d 88 (D.C. Cir. 2004).

that are before the Commission or Bureau/Office for determination—namely, the merits and public interest associated with the particular petition or application (and its constituent pieces), and how best to ensure that the proposed technology or service (whether new or not) can be used to serve the public. Such early formal review could also result in scarce staff resources remaining focused on the extent to which a technology or service is “new,” which can be a complicated or involved question, thus diverting needed resources away from the more important question of how best to address the underlying issues. We also note that while a negative determination would not be reviewable upon issuance, parties nonetheless would have the opportunity to comment on the determination and ask that the Commission or Bureau/Office reach a different conclusion when it evaluates the full record and takes action with respect to the petition/application or the proposed technology/service.²³

25. As required by section 7, any person or party (other than the Commission) who opposes a new technology or service has the burden to demonstrate that such a new technology or service is inconsistent with the public interest. For example, it would not be sufficient for someone to oppose a proposed technology or service merely because it might cause economic harm to its own service or disrupt a particular sector of the economy; the statute’s stated goal to promote new technologies and services in effect requires that opponents address the potential public interest associated with the proposed technology or service, not their own private interests.

26. *Commission or Bureau/Office Review.* For any petition/application proposing a technology or service that receives a positive 90-day determination, the Commission or Bureau/Office will evaluate the record once complete, and decide within a year of the filing date the appropriate course of action with respect to the petition or application.²⁴

27. Although section 7 requires timely action by the Commission, it does not create a presumption in favor of granting (in whole or part) any particular petition or application that includes a proposal to provide such new technology or service.²⁵ Indeed, it grants the agency plenary authority to dispose of the petition or application as it sees fit, including by initiating its own proceeding to explore matters further.²⁶

28. In cases where the 90-day determination is positive, to the extent the Commission or Bureau/Office determines that the petition/application proposes a technology or service that qualifies under section 7, it would be obligated to take some concrete action within one year that advances the

²³ The Commission has broad authority to develop appropriate processes to carry out its responsibilities. See 47 U.S.C. § 154(j) (“The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”).

²⁴ We note that in many cases the Commission or the Bureau/Office will have addressed the issues raised in the petition/application, including the use of the proposed technology or service (whether “new” or not), and have issued a final decision within a year in the ordinary course of processing under existing procedures. If so, this would obviate any additional requirements initially triggered by the section 7 request.

²⁵ Although section 7 places the burden on parties who oppose new technologies or services, it in no way alters the Commission’s discretion in determining what constitutes the public interest with respect to such technologies or services. Section 7 itself states: “Any person or party (*other than the Commission*) who opposes a new technology or service ... shall have the burden to demonstrate that such proposal is inconsistent with the public interest.” Communications Act § 7(a) (emphasis added). And the D.C. Circuit has affirmed the broad scope of the agency’s discretion. See *M2Z v. FCC*, 558 F.3d at 561-62 (so long as the Commission is not acting in an arbitrary or capricious manner, it may exercise its discretion to determine what constitutes the public interest with respect to a section 7 proposal; while section 7 places the burden on opponents of proposed new technologies or services to demonstrate that such new technology or service is inconsistent with the public interest, section 7 does not similarly shift the burden on the Commission to determine that an applicant’s proposed new technology or service is *not* in the public interest).

²⁶ See n.24, *supra*.

development and use of new technologies or services that are in the public interest. We seek comment on how to apply these procedures in instances where outside parties are either collaborating on or disputing the merits of a new technology or service. Should the Commission take these types of considerations into account when determining how to meet the one-year deadline imposed by a section 7 finding? In contrast, if the Commission or the Bureau/Office finds that a petition/application is not proposing use of new technologies or services,²⁷ and thus does not include any request that qualifies for consideration under Section 7, that petition/application would be handled under the existing Commission processes that apply generally to petitions and applications under the applicable rules.

29. *Pending Petitions and Applications.* The new rules and procedures discussed above would apply with respect to all newly filed petitions or applications that include a section 7 request. For any petition or application already pending at the time that the new rules would become effective, we propose a variant of this approach to accommodate any petitioner or applicant who also seeks consideration under section 7. In such cases, the petitioner or applicant would supplement its filing with a specific section 7 request that meets the criteria outlined above, which would be followed by issuance of a public notice focused on the section 7-specific request, the 90-day determination, and action within a year of the filing if merited.

B. Commission-initiated Proceedings for New Technologies or Services

30. Section 7 provides that if the Commission initiates its own proceeding for a new technology or service, such proceeding must be completed within a year after it is initiated.²⁸ We seek comment on how to ensure the Commission complies with this statutory provision. For instance, what factors should the Commission weigh in deciding whether to initiate a proceeding on its own under Section 7? Additionally, when the Commission itself does initiate a proceeding that it determines would trigger the section 7 timeline, should it identify the type of action(s) that it plans to complete within a year that would promote such new technology or service, so that it can in fact complete such action(s) within one year, or, does the statutory provision require a final order?

31. We believe that this approach would effectively serve the policy under section 7 to “encourage the provision of new technologies and services to the public” in a timely manner. We seek also comment on the various issues raised above and on alternative approaches to implementing procedures to ensure compliance with the section 7 requirements.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Analysis

32. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Initial Regulatory Flexibility Analysis

33. As required by the Regulatory Flexibility Act,²⁹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in the FNPRM. The IRFA is found in

²⁷ *See supra* paras. 13-17 (technological and service factors).

²⁸ Communications Act § 7(b).

²⁹ 5 U.S.C. § 603.

Appendix B. We request written public comment on the IRFA. Comments must be filed in accordance with the same filing deadlines as comments filed in response to the NPRM, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.³⁰

C. Filing Requirements

34. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

35. The proceeding that this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.³¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the

³⁰ 5 U.S.C. § 603(a).

³¹ 47 C.F.R. §§ 1.1200 *et seq.*

presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

36. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.³² These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

37. *Additional Information.* For additional information on this proceeding, contact Paul Murray, OET, paul.murray@fcc.gov, (202) 418-0688; or Jamison Prime, OET, jamison.prime@fcc.gov, (202) 418-7474.

V. ORDERING CLAUSES

38. IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(j) and 7 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j) and 157, this Notice of Proposed Rulemaking IS ADOPTED.

39. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³² Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

APPENDIX A**Proposed Rules**

Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation of Part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), 309, 1403, 1404, 1451, and 1452.

PART 1—PRACTICE AND PROCEDURE

2. Amend Part 1 by adding Subpart U to read as follows:

Subpart U—Implementation of Section 7 of the Communications Act: New Technologies and Services

Sec.

1.6000 Purpose and scope.

1.6001 Terms and definitions.

1.6002 Filing requirements for petitions and applications in which consideration under section 7 is requested.

1.6003 Processing procedures for petitions or applications, including a determination within 90 days.

1.6004 Evaluating new technologies and services proposed in petitions or applications.

1.6005 Commission or Bureau/Office review.

1.6006 Commission-initiated proceedings for new technologies or services.

AUTHORITY: 47 U.S.C. 157.

§ 1.6000 Purpose and scope.

- (a) The purpose of this subpart is to set out the procedures and terms by which the Commission will implement the provisions of section 7 of the Communications Act of 1934, as amended, 47 U.S.C. 157, to encourage the provision of new technologies and services to the public. The procedures set forth in this subpart shall apply with respect to any petition or application proposing use of a new technology or service in which the petitioner or applicant requests consideration under section 7.
- (b) The rules and procedures set forth in this subpart do not replace or substitute for the Commission's existing rules and procedures for processing that apply with respect to the particular petition or application submitted for consideration.

§ 1.6001 Terms and definitions.

- (a) Terms used in this subpart have the following meanings:

Petition or application. Any request for Commission action, as required under the Communications Act or the Commission's rules, including, but not limited to, petitions for rulemaking, petitions for waiver of Commission rules, and applications for authorization to provide technologies or services to the public.

Service. An activity, method, or system that provides to the public the means of meeting a public need including, but not limited to, communications, industrial, or scientific uses authorized under the Communications Act.

Technology. The application of scientific knowledge in engineering to solve problems or invent useful tools for practical, industrial, or scientific uses that rely on radio-frequency, wired, or other means authorized under the Communications Act.

- (b) For purposes of this subpart, the following dates shall apply:
 - (1) A petition or application that includes a proposal to permit use of a new technology or service, and for which the petitioner or applicant specifically requests consideration under section 7, shall be deemed filed as of the date when the petition or application, including the request for consideration under section 7, is complete as filed; such date shall be used for computing the beginning date pursuant to § 1.4(b) of this part.
 - (2) If the Commission initiates its own proceeding for a new technology or service under section 7, the beginning date for the action taken is computed pursuant to § 1.4(b) of this part.

§ 1.6002 Filing requirements for petitions and applications in which consideration under section 7 is requested.

- (a) If a petitioner or applicant seeks consideration under section 7, the petition or application shall include an express request for consideration under section 7 when the petition or application initially is filed.
- (b) The petition or application shall include:
 - (1) a detailed description of the proposed technology or service associated with the petition or application, and how it differs from existing technologies or services;
 - (2) a demonstration that the proposed technology or service satisfies § 1.6004(a) and one or more of the factors in § 1.6004(b), and
 - (3) a showing that the use of the proposed technology or service would be in the public interest as set forth in § 1.6004(c).
- (c) The petition or application shall comply with any legal or procedural requirements for the type of request being filed, whether required by statute, judicial precedent or Commission rules in this chapter, or include a request for waiver of Commission requirements.
- (d) The petition or application shall be filed electronically through the Commission database that is appropriate for the type of request being filed, and a copy of the petition or application shall be sent electronically to the Chief(s) of the authorizing Bureau and/or Office and the Chief, Office of Engineering and Technology (OET), or to an appropriate mailbox designated by them.
- (e) *Section 7 consideration for pending petitions or applications.* If a petition or application is already pending before the Commission at the time the rules in this subpart become effective, a petitioner or applicant that seeks section 7 consideration must submit an express request for consideration under section 7 that sets forth how it meets the specific requirements set forth in this section.

§ 1.6003 Processing procedures for petitions or applications, including a determination within 90 days.

- (a) With regard to the specific request for consideration under section 7, the Office of Engineering and Technology (OET) will assemble a team of Commission staff with appropriate expertise, including at least one representative from any Bureau(s) or Office(s) with subject matter expertise, to review the request to determine if it is complete and can be accepted for filing pursuant to § 1.6001(b)(1). The team will determine whether the request provides the information required by §§ 1.6002 and 1.6004 and complies with any other legal or procedural requirements necessary for processing.
- (b) When the underlying petition or application is complete and accepted for filing, consistent with applicable rules and procedures, and the request for consideration under section 7 is complete and accepted for filing pursuant to paragraph (a) of this section, a public notice seeking comment on the petition or application, including the proposed technology or service that the petitioner or applicant asserts as qualifying for section 7 consideration, will be issued. This public notice will

identify the date that the petition or application and the section 7 request is complete as filed, as well as any other relevant deadlines for agency action.

- (c) Any person or party (other than the Commission) who opposes a new technology or service proposed by the petitioner or applicant shall have the burden to demonstrate that such proposed technology or service is inconsistent with the public interest.
- (d) The OET-led team will make a determination within 90 days of the issuance of the public notice as to whether the technology or service proposed to be permitted qualifies as a new technology or service for consideration under section 7. This team will make this determination by evaluation the section 7 request pursuant to the factors set forth in § 1.6004.
 - (1) The OET-led team will notify the petitioner or applicant in writing of its determination within these 90 days.
 - (2) The determination will be included in the public record in the proceeding.
 - (3) The Commission and Bureau(s)/Office(s) with subject matter expertise will be informed of this determination.
 - (4) This determination is not subject to review in petitions for reconsideration or applications for review.
- (e) To the extent that the OET-led team determines that the request qualifies for section 7 treatment, the agency shall be committed to taking swift action to evaluate the technology or service. A determination by the OET-led team that the request does not qualify for section 7 treatment is not binding on the agency, and the Commission or the Bureau/ Office may determine in its evaluation of the record that the request merits section 7 treatment.

§ 1.6004 Evaluating the new technologies or services proposed in petitions or applications.

- (a) The proposed technology or service shall be technically feasible and commercially viable; the Commission will not consider a proposed technology or service that is merely theoretical or speculative. Petitioners or applicants shall include a showing of technical feasibility and commercial viability for the proposed technology or service by including, for example, the results of experimental testing, technical analysis, or research.
- (b) The proposed technology or service will be evaluated using one or more of the following factors.
 - (1) The technology or service has not previously been authorized by the Commission. This could include combining a previously-approved technology in new ways to improve performance or functionalities. The petition or application shall explain how the function and/or performance of the proposed technology or service differs in essential or fundamental respects from previously-approved technologies or services.
 - (2) The proposed technology or service is similar to one previously authorized but includes significant enhancements that result in new functionalities or improved performance. The petition or application shall explain how the proposed technology or service differs from previously-approved technologies or services, and shall specifically quantify or qualify the improvements in functionality or performance or otherwise explain in sufficient detail what is so new that it warrants consideration under section 7.
 - (3) Other factors set forth by the petitioner or applicant, or factors that the Commission deems appropriate for the specific technology or service that is proposed.
- (c) The petition or application shall include a showing that the proposed new technology or service would be in the public interest by, for example, explaining how the proposed technology or service would promote innovation and investment, provide new competitive choices to the public, provide new technologies that enable accessibility to people with disabilities, or meet public demand for new or significantly improved services in unserved and underserved areas.

§ 1.6005 Commission or Bureau/Office review.

- (a) For any petition/application including a proposed technology or service that receives a positive 90-day determination, the Commission or Bureau/Office will evaluate the record once complete,

and decide within a year of the filing date the appropriate course of action with respect to the petition or application.

- (b) Although section 7 requires timely action by the Commission, it does not create a presumption in favor of granting (in whole or part) any particular petition or application that includes a proposal to provide such new technology or service. The agency retains plenary authority to dispose of the petition or application and the proposed technology or service as it sees fit, including by initiating its own proceeding to explore matters further.
- (c) In cases where the 90-day assessment is positive, to the extent the Commission or Bureau/Office determines that the petition or application proposes a technology or service that qualifies under section 7, it would be obligated to take some concrete action within one year that advances the development and use of new technologies or services that are in the public interest.
- (d) If the Commission or the Bureau/Office finds that a petition or application is not proposing use of new technologies or services, and thus does not include any request that qualifies for consideration under section 7, that petition or application would be handled under the existing Commission processes that apply generally to petitions and applications under the applicable rules.

§ 1.6006 Commission-initiated proceedings for new technologies or services.

If the Commission initiates its own proceeding for a new technology or service, such proceeding must be completed within a year after it is initiated.

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as specified in the NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In this NPRM, we propose to adopt rules describing guidelines and procedures to implement section 7 of the Communications Act of 1934, as amended,⁴ thereby committing to speed our processes to enable the provision of new technologies and services to the public. Although the forces of competition and technological growth work together to enable the development of many new services to the public, the Commission's regulatory processes have at times been slow to identify and take action to ensure that important new technologies or services are made available to the public as quickly as possible.

3. We propose to interpret section 7 to include petitions for rulemaking or waiver of the Commission's rules as well as applications for authorization of any type of technology or service within the Commission's statutory purview, whether radio-based, wired, or otherwise. We also propose to interpret section 7 to apply to any petitions or applications that properly could be resolved either by the Commission or by any Bureau or Office pursuant to delegated authority. Whether the Commission itself, or a particular Bureau or Office acting on delegated authority, would address the section 7-related issue would depend on the particular filing, the nature of the request, and the kind of decision(s) and course(s) of action regarding the proposed new technology or service that may be deemed appropriate under the circumstances. To implement section 7, we propose adopting a new subpart in Part 1 that sets forth specific procedures and timetables for action with respect to requests in petitions or applications for section 7 consideration. These procedures and timetables are designed to ensure that the Commission or Bureau/Office identifies and moves swiftly to promote new technologies and services that are in the public interest. These new rules would not replace or substitute for the Commission's existing rules for processing petitions and applications. Instead, they would specify additional steps to ensure that timely decisions are made on section 7 requests suited to serve the public interest.

4. Section 7 establishes a timeline by which the Commission shall decide whether a proposed new technology or service is in the public interest—i.e., one year after a petition or application proposing a new technology or service is filed. However, it does not describe what form of action the Commission's public interest finding should take, nor does it describe how to evaluate requests for consideration under section 7. The proposed rules in this NPRM would ensure that any type of section 7 request is evaluated under a coherent and consistent set of procedures.

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See 5 U.S.C. § 603(a).

⁴ Communications Act § 7.

5. We propose to codify in Part 1 of our rules⁵ a set of factors that the petition or application must address and by which the Commission will evaluate a proposal to determine whether it is a new technology or service that would serve the public interest. Because the timeline for a Commission public interest finding is only one year from the filing date of the petition or application, we propose that the petition or application include a demonstration that the technology or service is technically feasible and available for commercial use/application, not theoretical or speculative, so that the public benefit can be realized as soon as practicable.

6. When a petition or application that includes a request for consideration pursuant to section 7 is filed, the Office of Engineering and Technology (OET) will assemble a team of Commission staff with relevant expertise, including at least one representative from any Bureau(s) or Office(s) with subject matter expertise, to review the request to determine if it is complete and will be accepted for filing. We propose that the date for initiation of the review period under section 7 be the date that the petition or application and the section 7 request is complete as filed. A public notice then will be issued, and will identify the date that the petition or application and the section 7 request is complete as filed, as well as any other relevant deadlines for agency action.⁶ We also propose that the OET-led team will make a determination of whether the proposal qualifies as a new technology or service for consideration under Section 7 based on the proposed technological and service factors. The OET-led team will make this determination within 90 days of the issuance of the public notice, notify the petitioner or applicant in writing of its finding, and include this determination in the public record in the proceeding. It also will inform the Commission and Bureau(s) and Office(s) with subject matter expertise. This determination would not be subject to petitions for reconsideration or applications for review.

7. We propose that to the extent that the OET-led team determines that the request qualifies for section 7 treatment, the agency shall be committed to taking swift action to evaluate the technology or service. A determination by the OET-led team that the request does not qualify for section 7 treatment would not be binding on the agency, and the Commission or the Bureau/Office may determine in its evaluation of the record that the request merits section 7 treatment. As proposed in the NPRM, for any petition/application that proposes a technology or service that receives a positive 90-day determination, the Commission or Bureau/Office will evaluate the record once complete, and decide within a year of the filing date the appropriate course of action with respect to the petition or application or the proposed technology or service.

8. Although section 7 requires timely action by the Commission, it does not create a presumption in favor of granting (in whole or part) any particular petition or application that includes a proposal to provide such new technology or service. The agency retains plenary authority to dispose of the petition or application and the proposed technology or service as it sees fit, including by initiating its own proceeding to explore matters further. In cases where the 90-day determination is positive, to the extent the Commission or Bureau/Office determines that the petition or application proposes a technology or service that qualifies under section 7, it would be obligated to take some concrete action within one year that advances the development and use of new technologies or services that are in the public interest. If the Commission or the Bureau/Office finds that a petition or application is not proposing use of new technologies or services, and thus does not include any request that qualifies for consideration under section 7, that petition or application would be handled under the existing Commission processes that apply generally to petitions and applications under the applicable rules.

9. Finally, in the NPRM we propose that if the Commission initiates its own proceeding for a new technology or service, such proceeding must be completed within a year after it is initiated.

⁵ 47 C.F.R. § 1 *et seq.*

⁶ The computation of the beginning date of the review period would follow 47 C.F.R. § 1.4(b).

B. Legal Basis

10. The proposed action is authorized pursuant to Sections 1, 4(i), 4(j) and 7 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j) and 157.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

11. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁰

12. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹¹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹² These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.¹³ Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁴ Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with Internal Revenue Service (IRS).¹⁵ Finally, the small entity described as a “small governmental

⁷ 5 U.S.C. § 603(b)(3).

⁸ 5 U.S.C. § 601(6).

⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁰ 15 U.S.C. § 632.

¹¹ See 5 U.S.C. § 601(3)-(6).

¹² See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016)

¹³ See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹⁴ 5 U.S.C. § 601(4).

¹⁵ Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016, there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccsweb.urban.org/tablewiz/bmf.php> where the report showing this data can be generated by selecting the following data fields: Show: “Registered Nonprofit Organizations”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁶ U.S. Census Bureau data from the 2012 Census of Governments¹⁷ indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁸ Of this number there were 37, 132 General purpose governments (county¹⁹, municipal and town or township²⁰) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts²¹ and special districts²²) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.²³ Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”²⁴

13. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including

¹⁶ 5 U.S.C. § 601(5).

¹⁷ See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>.

¹⁸ See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

¹⁹ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

²⁰ See U.S. Census Bureau, 2012 Census of Governments, Sub-county General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

²¹ See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

²² See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. [The U.S. Census Bureau data did not provide a population breakout for special district governments.](#)

²³ See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Sub-county General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

²⁴ *Id.*

VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁵ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁶ U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.²⁷ Thus, under this size standard, the majority of firms in this industry can be considered small.

14. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.²⁸ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁹ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.³⁰ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.³¹ Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

15. The Commission’s own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.³² The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.³³ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more

²⁵ See 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

²⁶ See 13 CFR § 120.201, NAICS Code 517110.

²⁷ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

²⁸ NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

²⁹ 13 CFR § 121.201, NAICS code 517210.

³⁰ U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210” (rel. Jan. 8, 2016).

³¹ *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

³² See <http://wireless.fcc.gov/uls>. For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

³³ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

than 1,500 employees.³⁴ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

16. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”³⁵ The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.³⁶ For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.³⁷ Of this total, 299 firms had annual receipts of less than \$25 million.³⁸ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

17. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.³⁹ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁴⁰ For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁴¹ Thus, a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

18. While we tentatively identify the various types of small entities that could be affected by the proposed rules in this NPRM, above, we are presently unable to define or quantify the criteria that would establish whether a specific petitioner or applicant who is affected by the rules proposed herein is dominant in its field of operation or is independently owned and operated, or meets any of the other criteria specified by the RFA. Accordingly, the estimate of small businesses to which these rules may apply do not exclude any entity from the definition of a small business on this basis and therefore may be over-inclusive to that extent.

19. The NPRM seeks comment from all interested parties. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the NPRM. The Commission expects to consider the economic impact on small entities, as identified in

³⁴ *See id.*

³⁵ U.S. Census Bureau, 2012 NAICS Definitions, “517410 Satellite Telecommunications”; <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517410#>.

³⁶ 13 CFR § 121.201, NAICS code 517410.

³⁷ U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~517410.

³⁸ *Id.*

³⁹ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁴⁰ 13 CFR 121.201; NAICS Code 517919

⁴¹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

D. Description of Projected Reporting, Recordkeeping, and other Compliance Requirements

20. We expect that all the filing, recordkeeping and reporting requirements associated with the proposed rules will be the same for large and small businesses; however, we seek comment on any steps that could be taken to minimize any significant economic impact on small businesses. We believe however that this rulemaking, by codifying the requirements of section 7 of the Communications Act into Part 1 of the Commission's rules, will provide an advantage to small entities, as these entities would benefit from a set of clear guidelines and a simpler, more comprehensive roadmap on how to bring to fruition the promise of new technologies or services. This will promote the regulatory certainty that would help those entities gain access to financial support and investments in innovation in a faster and more efficient manner than they currently could. The proposed rules in this NPRM would ensure that any type of section 7 request is evaluated under a coherent and consistent set of procedures, possibly leading to cost cutting in time and efforts by small entities in advancing such a request.

E. Steps taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁴²

22. The filing, recordkeeping, and reporting requirements described in the rules proposed herein are formulated to be as simple and coherent as possible. A petitioner or applicant that proposes a new technology or service that qualifies for section 7 treatment would benefit from the Commission's commitment to swift action to evaluate the technology of service; the burden we place on such petition or application is the demonstration that the proposal meets one or more of the proposed technological and service factors, such as being technically feasible and commercially viable, and be in the public interest, *e.g.*, meeting a public demand for increased and improved connectivity, particularly in unserved and underserved areas; the supporting information submitted also needs to be as complete and comprehensive as possible to facilitate and expedite the review process. Other than this new burden in exchange for swift review, all other filing, reporting, and record keeping are the same as for any other petition or application under our regular requirements.

23. We believe that by codifying the requirements of section 7 of the Communications Act into Part 1 of the Commission's rules, small entities would benefit from a set of simpler, more comprehensive guidelines that would save resources and time in their search for implementation and deployment of innovative technologies and services; a positive finding from the Commission in a relatively quick time frame would provide a degree of regulatory certainty for a small entity to seek timely financial investment in the development and deployment of their products or services, and would greatly benefit entrepreneurs. We seek comment on whether any of burdens associated with the filing, recordkeeping and reporting requirements described in the rules proposed herein can be further minimized for small businesses.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

24. None.

⁴² 5 U.S.C. § 604(a)(6).

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Encouraging the Provision of New Technologies and Services to the Public*, GN Docket No. 18-22

Section 7 of the Communications Act was passed by Congress and signed into law by President Reagan in 1983. It instructs the FCC to respond within one year to applications proposing new technologies or services.

Unfortunately, and to the detriment of both innovators and consumers, the Commission has not established any guidelines or rules in the three-and-a-half decades since to implement this future-focused tool.

In my first major policy address as Chairman, I promised to eliminate unnecessary barriers to technological innovation. And bureaucratic inertia can often be one of those barriers. So today, we're proposing clear guidelines and procedures to implement section 7. Our goal is simple: to ensure that the FCC doesn't stand as a gatekeeper between entrepreneurs who need our OK for new technologies and services and American consumers who can benefit from those innovations.

Under my leadership, the FCC has taken a series of steps to promote technological progress. From approving the first LTE-U devices to signing off on the next-generation broadcast television standard to green-lighting a power-at-a-distance wireless charging transmitter, we've stood on the side of innovation. And by putting in place procedures to give life to section 7, we will help ensure that the FCC is an ally to entrepreneurs in the years to come.

Many thanks to Howard Griboff, Walter Johnston, Julie Knapp, James Miller, Paul Murray, Jamison Prime, and Rodney Small from the Office of Engineering and Technology; Matthew Pearl, John Schauble, Blaise Scinto, and Joel Taubenblatt from the Wireless Telecommunications Bureau; Robert Cannon and Wayne Leighton from the Office of Strategic Planning and Policy; Karen Peltz-Strauss from the Consumer and Governmental Affairs Bureau; and David Horowitz and Doug Klein from the Office of General Counsel.

**STATEMENT OF COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART; DISSENTING IN PART**

Re: *Encouraging the Provision of New Technologies and Services to the Public*, GN Docket No. 18-22

Thirty-five years ago, Congress amended the Communications Act to include language stating that it “shall be policy of the United States to encourage the provision of new technologies and services to the public.” This statute also provides that “the Commission shall determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed.” On occasion, the Commission has considered these provisions. Yet in the more than three decades since Section 7’s enactment, no Commission has attempted to develop procedural rules to implement its provisions. The reason may be that, if the agency does not carefully craft such procedures, they could result in the Commission inappropriately putting its thumb on the scale of whether a new technology succeeds or not instead of letting the market decide.

The absence of procedural rules to implement Section 7 has not impeded innovation in the technology and communications industries. Since 1983, we have seen the development of GPS-enabled smartphones, VoIP services, Bluetooth, Wi-Fi, remote monitoring, telemedicine, medical body area networks, medical micropower networks, internet-of-things, smart home technologies, connected vehicles, virtual reality, augmented reality, big data analytics, unmanned aerial vehicles, and so much more.

Although I question whether procedural rules to implement Section 7 are necessary, and whether they will actually impede rather than incent innovation, I do not object to initiating a proceeding that attempts to discern and effectuate Congress’s intent for the statute. I am disappointed, however, that a decision was made to include questions that would move the Commission away from the well-established agency practice that when a Bureau-level item is circulated on delegated authority, the request of just one Commissioner is sufficient to elevate that item to the Commission level. I believe this customary practice is an important check on new procedures that have the potential to adversely impact consumers, competition and innovation. As a result, I dissent in part from the NPRM.

I look forward to reviewing the record as it develops and thank the Office of Engineering and Technology and the other subject matter experts for their work on the Notice.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: Encouraging the Provision of New Technologies and Services to the Public, GN Docket No. 18-22

I support efforts to speed up Commission decision making, and this notice seeks to fulfill this goal by implementing section 7, which requires the Commission to act on petitions or applications involving “new technologies or services” within one year. Ideally, the Commission would implement true shot clocks to respond to filings across the board and not just limit it to a subset of our proceedings. But, for now, this notice will start a worthwhile discussion about how we can expedite certain Commission decisions.

Today’s item also makes it necessary to explore the issue of delegated authority. While our dedicated staff are more than capable of evaluating innovative services, by their very nature petitions filed under section 7 raise new and novel technologies, issues, and fact-specific determinations about whether a possible offering fits under the section. In truth, no one really knows what could be filed under this provision and these new procedures. Therefore, the Commissioners appropriately should have a role. While I believe that the Commission must treat all requests found to fall under section 7 as new or novel requiring a Commission-level vote, I am willing to explore at this stage alternatives to this requirement in our rules. Thus, I am pleased that, at my request, we are seeking comment on procedures to provide Commissioners the opportunity to review these findings before release, to elevate these decisions to the floor for a Commission-level vote, and to establish timelines for such a vote so that these actions do not get unnecessarily delayed. This is basically the proposal I floated months ago to address the delegated authority problem.

Going forward, we also must ensure that section 7 is used constructively and does not have unintended consequences, such as causing delays to other proceedings that don’t get such treatment or providing a competitive advantage to some entities over others.

I thank the Chairman for implementing my other edits, including seeking broad comment on how to comply with the section 7 statutory language for Commission initiated proceedings. I also thank the Office of Engineering and Technology (OET) for working with me on these issues. I look forward to discussing this proceeding – and other ways that the Commission can improve its operations – with interested parties.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Encouraging the Provision of New Technologies and Services to the Public*, GN Docket No. 18-22

“It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person . . . who opposes a new technology or service. . . shall have the burden to demonstrate that such proposal is inconsistent with the public interest.”

Congress added those words to the end of a five-page bill in 1983. They instruct the Commission to side with inventors and innovators. They tell us to presume in favor of the disrupters and place the burden of proof on the incumbents.

We haven’t done much to operationalize those words in the last 35 years. We have used other authorities to create our experimental licensing program, designate innovation zones, conduct the Pioneer’s Preference Program, and implement “flexible use” licensing policies.

Today, we begin to make up for lost time. In this NPRM, we propose a set of factors that innovators can use to determine whether their technologies will qualify for expedited section 7 review. Our proposal requires the Office of Engineering and Technology to make an initial determination of whether the technology qualifies as “new” within 90 days. It also fulfills the law’s requirement that the Commission decide on a petition or application within a year. There is much the Commission can do to create an environment that encourages innovation. This is a solid step in the right direction.

I want to thank the Office of Engineering and Technology, the Wireless Telecommunications Bureau, and the International Bureau for their work in developing today’s item. It has my support.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING**

Re: *Encouraging the Provision of New Technologies and Services to the Public*, GN Docket No. 18-22

Today's rulemaking proposes something seductively simple: this agency will make a decision about any new technology and service within a year. But appearances can be deceiving. While preaching the value of speedy decision-making, it sets up a structure to do just the opposite. It inserts the Federal Communications Commission into the introduction of any new technology or service in the economy in a way that will increase bureaucracy and decrease innovation.

This proposal is brazen in its disregard for mistakes of the past, negligent in its failure to acknowledge opportunities for abuse, and bungles the nature of true innovation.

First, past is prologue. Section 7 of the Communications Act directs the agency to determine if new technologies or services are in the public interest within one year. But nowhere in this rulemaking will you find a thoughtful effort to define this phrase. In the absence of discussion here, we can look to history.

In 1991, the FCC adopted a Pioneer's Preference Program. This program offered preferential licensing treatment for entities making significant contributions to new spectrum technologies or services. It has an eerie similarity to the terminology and process proposed today. Were we to study this history, we would recognize that this program was a failure. The agency's inability to determine what was in fact a new technology or service led to the collapse of the Pioneer's Preference. The FCC was flooded with more than 140 applications for this preference and then tied up for years in litigation with those entities who were denied. In one case, a court ordered the FCC to designate a spurned applicant as a pioneer, prompting a settlement of \$125 million in the form of an auction bidding credit. The agency couldn't end this program fast enough—in fact, it was terminated well before the last of the court cases wrapped up.

So we've trod this path before. We should have learned a lesson. The FCC is poorly equipped to identify whether a proposed technology or service is in fact, new. That's what makes the lack of any meaningful guidance in this rulemaking troubling. Apparently, our standard is like Potter Stewart's famed obscenity test. What is a new technology or service? I guess we'll know it when we see it.

Second, the proposal put forth is ripe for abuse. Section 7 requires anyone who opposes a new technology or service to demonstrate that any petition associated with it is at odds with the public interest. History, however, demonstrates that there are those who will feel challenged by progress. Incumbents today are vulnerable to upstarts tomorrow. The rules proposed here—under the guise of spurring innovation—will give anyone threatened by change the ability to oppose what is novel and the right to stonewall progress. Look for mention in this rulemaking of the incentives to abuse our process and hold innovation hostage in our bureaucracy and you won't find it. But they're there.

Third, genius takes time. New forms of communication can raise novel questions. They rarely fit into existing regulatory paradigms. They often raise issues of classification and pose interference challenges.

So it was with white spaces, ultrawideband technologies, real-time text, vehicular radars, signal boosters, digital television, location information for emergency calling, millimeter wave broadband

services, and Wi-Fi devices. They're all new and important forces in communications. But not one of them was wrapped up neatly in a single year. Regulatory inertia did not hold them back. The push and pull of testing, assessing, recalibrating, coordinating, and reworking made them possible. This iterative process is what real innovation looks like—and it is what today's rulemaking fundamentally gets wrong.

I dissent.