

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF CTIA**

CTIA<sup>1</sup> respectfully submits these comments in response to the Notice of Proposed Rulemaking released by the Federal Communications Commission (“Commission”)<sup>2</sup> proposing guidelines and procedures to implement Section 7 of the Communications Act of 1934, as amended.<sup>3</sup>

**I. INTRODUCTION.**

CTIA supports the Commission’s commitment to expediting the rollout of new technologies and services to the public. Wireless providers are continuously investing in their networks and innovative technologies that have and will continue to bring an unprecedented number of new technologies and services to consumers’ daily lives. The Commission has taken important steps to facilitate wireless innovation, identifying additional spectrum and reforming infrastructure siting procedures.

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<sup>1</sup> CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> *Encouraging the Provision of New Technologies and Services to the Public*, Notice of Proposed Rulemaking, GN Docket No. 18-22, FCC 18-18 (rel. Feb. 23, 2018) (“*NPRM*”).

<sup>3</sup> 47 U.S.C. § 157 (Communications Act § 7).

Section 7 may be a useful tool in the ongoing effort to advance wireless growth and development. Indeed, the Commission’s proposals have the potential to accelerate the deployment of cutting-edge technologies and services to consumers, precisely what Congress envisioned when it enacted Section 7. While the Commission’s goal of minimizing regulatory delays in technological advancements is commendable, Section 7’s mandate may prove challenging to implement. Without appropriate safeguards, Section 7’s implementing framework could be ripe for abuse by parties seeking to circumvent the agency’s well-established licensing policies. CTIA therefore urges the Commission to adopt measures that will prevent abuse while still eliminating unnecessary delays in bringing new technologies and services to market.

## **II. THE WIRELESS INDUSTRY IS CONSTANTLY DEVELOPING NEW, INNOVATIVE SERVICES AND TECHNOLOGIES.**

Technological innovation has long been the hallmark of the wireless industry. Wireless visionaries are constantly pushing technological boundaries and developing new technologies and services that have the power to transform our everyday lives. As CTIA has explained, the next generation of wireless networks will fundamentally change how we communicate, travel, learn, and receive medical care.<sup>4</sup> From unmanned vehicles to virtual reality to “smart cities” and beyond, these new wireless networks will bring about a seismic shift in the way consumers seamlessly integrate wireless connectivity into daily life and unleash a wave of game-changing services and technologies.

Enabling continued innovation in wireless services will require smart government policies, including adopting flexible-use licensing policies and minimizing the regulatory

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<sup>4</sup> See Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177 *et seq.*, at 1 (filed Apr. 17, 2018) (“CTIA 5G Ex Parte”).

burdens of bringing new services and technologies to market. The Commission's flexible-use licensing framework, which CTIA supports, has been a proven success, implementing a balanced approach to licensed and unlicensed spectrum, and helps the wireless industry achieve the most effective and efficient use of spectrum. As Chairman Pai has aptly noted, by embracing a flexible-use policy for wireless spectrum, the Commission has "enabled our wireless networks to evolve with technology, including the rollout of 4G LTE on a timeline that matched consumer demand."<sup>5</sup>

Indeed, flexible-use policies have allowed wireless innovation to thrive. For example, the wireless industry has invested heavily in developing technology to provide 4G LTE service on unlicensed spectrum.<sup>6</sup> Consumers are beginning to realize the benefits of transformative services made possible by LTE-Unlicensed ("LTE-U") and Licensed Assisted Access ("LAA") technologies, which allow wireless providers to offer faster speeds and greater network capacity using unlicensed spectrum. The wireless industry worked for more than three years in coordination with the FCC, standards bodies, and other stakeholders in seeking authorization for the first-ever LTE-devices.<sup>7</sup> Within two months, LTE-U supported devices entered the consumer market.<sup>8</sup>

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<sup>5</sup> Remarks of FCC Chairman Ajit Pai at the Mobile World Congress, Barcelona, Spain, at 3 (Feb. 28, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-343646A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-343646A1.pdf).

<sup>6</sup> See Comments of CTIA, WT Docket No. 17-69, at 40 (filed May 8, 2017) ("CTIA 2017 Wireless Competition Report Comments") (detailing LTE-U research and deployment efforts).

<sup>7</sup> See, e.g., *You Know LTE/LTE Advanced... But How About in Unlicensed Spectrum?*, QUALCOMM ONQ BLOG (Nov. 20, 2013), <https://www.qualcomm.com/news/onq/2013/11/20/ltelte-advanced-unlicensed-spectrum>.

<sup>8</sup> See Julius Knapp, *OET Authorizes First LTE-U Devices*, FCC BLOG (Feb. 22, 2017), <https://www.fcc.gov/news-events/blog/2017/02/22/oet-authorizes-first-lte-u-devices>; FCC Press Release, Chairman Pai Statement on Commission Authorization of First LTE-U Devices (Feb. 22, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-343598A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-343598A1.pdf); Monica Allevan, *Samsung Galaxy S8 Supports LTE-U, which both Verizon and T-Mobile Aim to Deploy*, FIERCEWIRELESS (Mar. 29, 2017), <https://www.fiercewireless.com/wireless/samsung-galaxy-s8-enabled-for-lte-u-supporting-verizon-and-t-mobile-deployments>.

As CTIA and others have noted, industry works tirelessly to test and develop new technologies, moving quickly to make these offerings available to consumers.<sup>9</sup> Reducing regulatory delays in deploying new services and technologies, where appropriate, will foster continued wireless innovation.

### **III. CTIA SUPPORTS THE COMMISSION’S EFFORT TO “BREATHE LIFE” INTO SECTION 7.**

CTIA applauds the Commission for taking a fresh look at how Section 7 may be leveraged to promote technological progress. Section 7 affirms the Commission’s commitment to championing new technologies and services, reflecting the basic principle that the Commission should facilitate, rather than delay, technological innovation. It clarifies that the “policy of the United States” is to “encourage the provision of new technologies and services to the public.”<sup>10</sup> To achieve this policy, the statute directs the Commission to “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.”<sup>11</sup>

Despite Section 7’s important objective of promoting technological innovation, it has largely gone unutilized since its adoption in 1983.<sup>12</sup> Chairman Pai has observed that “[u]nfortunately, and to the detriment of both innovators and consumers, the Commission has not

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<sup>9</sup> See, e.g., CTIA 2017 Wireless Competition Report Comments at 36; Comments of Verizon, WT Docket No. 17-69, at 9-14 (filed May 8, 2017); Comments of Mobile Future, WT Docket No. 17-69, at 4-6 (filed May 8, 2017).

<sup>10</sup> 47 U.S.C. § 157.

<sup>11</sup> *Id.* Similarly, Section 7 provides that, where the Commission “initiates its own proceeding for a new technology or service, such proceeding shall be completed within 12 months after it is initiated.” *Id.*

<sup>12</sup> 47 U.S.C. § 157.

established any guidelines or rules in the three-and-a-half decades since to implement this future-focused tool.”<sup>13</sup>

CTIA supports the Commission’s proposal to organize, for each petition or application with a Section 7 request, a team comprised of staff from the Office of Engineering and Technology and the authorizing Bureau(s) and Office(s) to determine within 90-days whether the proposal qualifies as a new technology or service eligible for Section 7 review.<sup>14</sup> The Commission’s proposal to “decide within a year of the filing date the appropriate course of action” for all Section 7-eligible requests<sup>15</sup> is likewise laudable.

CTIA agrees with the Commission that Section 7 “does not create a presumption in favor of granting (in whole or part) any particular petition or application,” but rather “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.”<sup>16</sup> As Chairman Pai explained, the statute “instructs the FCC to *respond* within one year to applications proposing new technologies or services.”<sup>17</sup> The agency is under no obligation to render a final decision. Rather, it must “determine whether [an eligible petition or application] is in the public interest.”<sup>18</sup>

Establishing guidelines and procedures to implement Section 7, though challenging, is consistent with the agency’s efforts to eliminate unnecessary barriers to technological

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<sup>13</sup> *NPRM*, Statement of Chairman Ajit Pai, at 1.

<sup>14</sup> *See id.* ¶¶ 22-25.

<sup>15</sup> *Id.* ¶ 26.

<sup>16</sup> *Id.* ¶ 27.

<sup>17</sup> *Id.*, Statement of Chairman Ajit Pai, at 1 (emphasis added).

<sup>18</sup> 47 U.S.C. § 157.

innovation. By accelerating agency review, the Commission can cut regulatory delays that prevent consumers from realizing the benefits of rapidly evolving technologies and services.

**IV. THE COMMISSION SHOULD ENSURE THAT ITS SECTION 7 PROCESS DOES NOT INADVERTENTLY PERMIT PARTIES TO CIRCUMVENT LICENSING AND REVIEW PROCEDURES, WHICH WERE DEVELOPED TO SAFEGUARD THE PUBLIC INTEREST.**

While CTIA supports the Commission’s important goal of minimizing unnecessary regulatory delays, implementing Section 7 may prove challenging. For example, applying Section 7 may put the Commission in the difficult role of determining which technologies and services are “new” and thus eligible for Section 7 processing. As the Commission recognizes, this “can be a complicated or involved question.”<sup>19</sup> This is especially true where the applicant or petitioner is advancing technologies or services that are similar to something previously authorized, but that arguably include “significant enhancements” resulting in “new functionalities or improved services.”<sup>20</sup>

The Commission, without appropriate safeguards, may find itself in the position of picking winners and losers—an outcome that undermines the very policies that fuel innovation. Thus, Commissioner O’Rielly has rightly emphasized that the agency “must ensure that [S]ection 7 is used constructively and does not have unintended consequences, such as causing

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<sup>19</sup> *NPRM* ¶ 24.

<sup>20</sup> *Id.*, Annex A (Proposed Rules), 47 C.F.R. § 1.6004. The Commission’s current proposal includes three categories of factors to consider when evaluating whether a technology or service is “new”: whether the Commission has previously authorized the technology or service; if the proposed technology or service is similar to one previously authorized, whether it includes significant enhancements that result in new functionalities or improved performance; and “other factors set forth by the petitioner or applicant, or factors that that Commission deems appropriate for the specific technology or service that is proposed.” *See id.*

delays to other proceedings that don't get such treatment or providing a competitive advantage to some entities over others.”<sup>21</sup>

As it considers a framework to implement Section 7, the Commission should ensure that potential applicants cannot seize upon the new Section 7 process to avoid formal rulemakings and skirt regulatory obligations. Although CTIA supports eliminating bureaucratic delay, certain licensing and rulemaking procedures are essential to developing the record and enabling informed decision-making. Indeed, the Commission can have an important role to play in evaluating whether a new technology or service would harmfully interfere with incumbent operations and, if so, to identify narrowly tailored conditions to protect these operations. This is especially true in the case of *bona fide* new technologies or services requiring the agency to develop new technical and operating rules. As Commissioner Rosenworcel has observed, “[n]ew forms of communication can raise novel questions. They rarely fit into existing regulatory paradigms. They often raise issues of classification and pose interference challenges.”<sup>22</sup>

For these reasons, the Commission should clarify that neither the statute nor the agency's proposed implementing rules *require* the Commission to render a final decision on applications or petitions for new services or technologies within one year of filing. Rather, the Commission has ample discretion to determine what concrete action it should take to advance the development and use of new technologies or services that are in the public interest.

Finally, the Commission should clarify that eligible Section 7 petitioners or applicants seeking access to spectrum subject to auction procedures must wait for the next spectrum auction, even if doing so would prevent Commission action on an application within one year.

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<sup>21</sup> *Id.*, Statement of Commissioner Michael O’Rielly, at 1.

<sup>22</sup> *Id.*, Dissenting Statement of Commissioner Jessica Rosenworcel, at 1.

The agency has appropriately recognized that spectrum auctions help ensure that spectrum is put to its highest and best use.<sup>23</sup> However, some may attempt to leverage the Section 7 process as a vehicle to bypass the auction process altogether, obtaining exclusive access to spectrum by regulatory fiat.<sup>24</sup> The Commission should confirm that the Section 7 process cannot be used to short cut well-established auction procedures and policies.

## V. CONCLUSION.

CTIA supports the agency's effort to accelerate the deployment of new technologies and services by responding to Section 7-eligible applications or petitions within one year.

Consumers benefit from the elimination of needless regulatory barriers, especially those hindering the deployment of new technologies and services. At the same time, consumers also benefit from certain licensing and rulemaking procedures that protect the public interest and encourage marketplace competition. CTIA therefore urges the Commission to adopt appropriate safeguards to prevent abuse, while removing unnecessary delays in bringing new technologies and services to the public.

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<sup>23</sup> See FCC, About Auctions (last visited May 11, 2018), [http://wireless.fcc.gov/auctions/default.htm?job=about\\_auctions](http://wireless.fcc.gov/auctions/default.htm?job=about_auctions) (“The Commission has found that spectrum auctions more effectively assign licenses than either comparative hearings or lotteries. The auction approach is intended to award the licenses to those who will use them most effectively. Additionally, by using auctions, the Commission has reduced the average time from initial application to license grant to less than one year, and the public is now receiving the direct financial benefit from the award of licenses.”).

<sup>24</sup> For example, M2Z Networks sought an exclusive, nationwide license to the entire 2155-2175 MHz AWS-3 band pursuant to Section 7 for a wireless broadband service the Commission ultimately deemed “unremarkable.” *In the Matter of Applications for License and Authority to Operate in the 2155-2175 MHz Band*, Order, 22 FCC Rcd. 16563, ¶ 14 (2007). See also, *M2Z Networks, Inc. v. FCC*, 558 F.3d 554, 562 (D.C. Cir. 2009).



Respectfully submitted,

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