

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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

**COMMENTS OF  
THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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**I. INTRODUCTION AND SUMMARY**

The Telecommunications Industry Association (“TIA”)<sup>1</sup> hereby submits these comments in response to the Commission’s *Notice of Proposed Rulemaking* (“Notice”)<sup>2</sup> in the above-captioned proceeding. TIA commends the Commission’s efforts through this Notice to enable the development of new technologies and services by breathing life into section 7 of the Communications Act of 1934, as amended.<sup>3</sup> TIA applauds the Commission’s effort in this Notice to fulfill the policy goal of Section 7 and facilitate the provision of new technologies and services to the public.

In adopting rules to implement new Section 7 procedures, however, it is important that the Commission establishes and follows a clear and deliberative process. While TIA commends the Commission’s focus on efficiency in the Notice, there may be certain innovations that require

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<sup>1</sup> TIA is the leading trade association for the information and communications technology (“ICT”) industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of policy issues affecting the ICT industry and forges consensus on industry standards.

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

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

more time and effort to determine if they are truly new and in the public interest. In these circumstances, we are concerned that a strict one-year deadline might negatively impact the Commission's deliberative process. TIA applauds the Commission's commitment to facilitate the advent of new technologies, however the Commission must ensure it has the required resources to successfully implement the new Section 7 procedures without straining existing programs.

## **II. THE COMMISSION SHOULD ADOPT PROCEDURES AND GUIDELINES IMPLEMENTING SECTION 7 TO PROMOTE INNOVATION.**

TIA supports the Commission's commitment to fulfill its Section 7 mandate by proposing a process for the introduction of new technologies and services to the public. Although Section 7 was added to the Communications Act thirty-five years ago, the Commission has never issued rules adopting formal procedures or issued any guidance on how Section 7 would be implemented.<sup>4</sup> As a result, the Commission has not fully carried out its Section 7 mandate to "encourage the provision of new technologies and services to the public."<sup>5</sup> The Notice correctly notes that past proceedings to bring the "the benefits of and opportunities provided by new technological choices and new services" have historically suffered delays from many factors, ranging from unfamiliarity with the proposed technology or service to outdated procedural regulatory requirements and "regulatory inertia."<sup>6</sup> Consequently, petitions and applications have often been delayed, sometimes at the harm of entrepreneurs proposing new ideas and the public that would have benefited from them.

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<sup>4</sup> Notice ¶ 4.

<sup>5</sup> Section 7(a).

<sup>6</sup> Notice ¶ 7.

On behalf of our members in the ICT industry who will be directly impacted by these new procedures and the public at large who will benefit through innovations in technology, TIA supports this effort by the Commission to provide clarity and efficiency to Section 7 proceedings.

### **III. SECTION 7 RULES MUST ESTABLISH A CLEAR AND DELIBERATIVE PROCESS.**

The Notice proposes effective and efficient procedures and guidelines to inform both the public and Commission staff how Section 7 proceedings will be handled on a going-forward basis. For example, TIA supports the implementation of a 90-day determination period, where OET must determine if the proposed technology or service proposed in the Section 7 proceeding qualifies as a new technology or service.<sup>7</sup> If OET determines that the proposed technology qualifies as “new,” the Notice requires the Commission or relevant Bureau/Office to issue a determination of whether the proposed technology or service serves the public interest within one year. However, in order to efficiently facilitate the application of these rules to Section 7 proceedings, the Commission should adopt procedures and timelines for when comments or oppositions are filed in a proceeding and clarify the burden an opposing party must meet in order to show a new service or technology is inconsistent with the public interest.

#### **a. The Rules Should Establish Clearer Procedures and Timelines for Situations Where a Section 7 Proceeding is Opposed.**

To fulfill the Commission’s goal of implementing a “coherent and consistent set of procedures” for the Section 7 process, the Commission should establish clear procedures for when a Section 7 proceeding is opposed.<sup>8</sup> During both the 90-day determination period and the

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<sup>7</sup> Notice ¶ 22.

<sup>8</sup> Notice ¶ 11.

one-year review of a Section 7 proceeding, interested parties are allowed to submit comments or oppositions on whether the proposed technology or service is new or in the public interest, however the Notice does nothing to establish how these comments and oppositions will be handled.

With respect to the 90-day determination period, the Notice requires OET to consider all comments, including any oppositions, received in response to the public notice, but does not set forth any timeline for when such comments or opposition would be due.<sup>9</sup> Any public notice must establish a firm and reasonable comment cycles that will allow for *both* thoughtful consideration and response by the public as well as sufficient time for the FCC staff to make an informed decision based on the Section 7 request and the public notice record. As observed in the Notice, in past Section 7 proceedings competitors have “often” filed petitions to deny or oppose the introduction of a new service or technology, resulting in delays to the Section 7 process.<sup>10</sup> There is no reason to think that such oppositions from competitors will not continue under the proposed Section 7 procedures, both during the 90-day determination period and during the one-year timeline for the proceeding as a whole. Thus, new rules should account for this likely outcome.

The Notice does not offer sufficient guidelines for these contentious Section 7 proceedings. In order to ensure that the final rules implementing the Section 7 procedures address this inevitable scenario, the Commission should create procedures that must be followed when comments or oppositions are filed, both during the 90-day determination period and during the Section 7 proceeding at large. These procedures should include timelines for when

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<sup>9</sup> Notice ¶ 22; *id.* at App. A, proposed § 1.6003(b).

<sup>10</sup> Notice ¶ 7.

oppositions must be filed, provide opportunities for parties to respond, and allot time for the Commission or OET to issue a decision. For Section 7 proceedings that are particularly contentious and receive numerous oppositions, it may prove impossible to determine a fair outcome in the one-year time period granted to the Commission.

**b. The Commission Should Clarify the Burden an Opposing Party Must Meet in Order to Demonstrate That a Section 7 Proceeding is Inconsistent with the Public Interest.**

Under the rules proposed by the Notice, any person or party that opposes a proposed new technology or service in a Section 7 proceeding “shall have the burden to demonstrate that such proposed technology or service is inconsistent with the public interest.”<sup>11</sup> The Notice only briefly discusses this burden by stating that an opposition must address the “potential public interest associated with the proposed technology or service, not their own private interests” such as economic harm to a competitor or disruption to a sector of the economy.<sup>12</sup>

In order to fulfill the Notice’s goal of adopting efficient and clear procedures for Section 7 proceedings, the final order adopting Section 7 rules should discuss how this burden will be analyzed by the Commission. As stated in the Notice, the Commission has broad discretion in determining what “constitutes the public interest with respect to such technology or services.”<sup>13</sup> TIA urges the Commission to utilize this discretion to clarify how this burden compares to a Section 7 petitioner or applicant’s initial “quantitative analysis”<sup>14</sup> that a proposed technology is in the public interest, and what factors or tests the Commission intends to apply when determining if this burden has been met. The Commission should clarify this burden further,

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<sup>11</sup> Notice at App. A, proposed § 1.6003(c).

<sup>12</sup> Notice ¶ 25.

<sup>13</sup> Notice at n.25

<sup>14</sup> Notice ¶ 13.

thereby encouraging effective oppositions showing genuine harm to the public interest and discouraging frivolous oppositions focused on the economic interests of individual parties.

**IV. THE RULES SHOULD PROVIDE FLEXIBILITY FOR THE COMMISSION TO EXTEND ITS CONSIDERATION OF PROCEEDINGS RAISING ISSUES THAT CANNOT BE APPROPRIATELY RESOLVED WITHIN ONE YEAR.**

TIA commends the Commission's efforts to implement efficient procedures for Section 7 proceedings that are in line with the "clear Congressional intent to encourage and expedite provision of technological innovation that would serve the public interest."<sup>15</sup> However, the Commission should provide flexibility in Section 7 proceedings that will not be able to be completed within the required one-year timeline.

**a. The Statutory Text Does Not Require the Commission to Resolve All Questions Related to a New Technology or Service Within One Year.**

The language of Section 7(b) requires 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 is filed."<sup>16</sup> The rules proposed by the Notice would require the Commission to "decide within a year of the filing date the appropriate cause of action" for any Section 7 petition or application that receives a positive 90-day determination from OET.<sup>17</sup> As laid out in the Notice and proposed rules, this decision will constitute a final decision of the Commission that is appealable by interested parties.

On its face, Section 7 does not require the Commission to come to a final appealable decision on an application or petition for rulemaking within a year.<sup>18</sup> Rather, the language of the

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<sup>15</sup> Notice ¶ 8.

<sup>16</sup> Section 7(b).

<sup>17</sup> Notice at App. A, § 1.6005(a).

<sup>18</sup> Section 7.



statute requires that the Commission reaches a determination on whether any proposed technology or service in a Section 7 proceeding is both new and within the public interest. While the goal in most Section 7 proceedings should be to issue a final decision within a year of the filing, it is important for the Commission to implement rules that provide flexibility for any Section 7 proceeding that cannot be concluded within the typical one-year window. Accordingly, TIA agrees that the requirement 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” is reasonable.<sup>19</sup>

**b. Some Section 7 Proceedings May Raise Complex Technical Issues Involving Multiple Stakeholders and Appropriately Require More Time for Complete Evaluation by the Commission.**

The premise of Section 7 is to encourage the growth and innovation of new and groundbreaking technologies and services for Commission review and approval. By their very nature, it is impossible to know in advance what issues may be raised by any individual Section 7 proceeding. While it is possible that the Commission will be able to reach a final decision on many Section 7 proceedings within one year, such a timeline may prove unrealistic for certain proposals. For example, the Commission might find that it needs additional time to consider petitions and applications that raise inherently complex issues or, as discussed above, prove to be particularly contentious and result in numerous filings from multiple stakeholders.

While such cases should not be the norm, TIA recommends that the Commission build flexibility into the Section 7 rules that would allow for an extended period of review before reaching a final decision on a petition or application’s merits. In such cases, the Commission could issue an initial determination on the merits of the Section 7 proceeding, thereby complying

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<sup>19</sup> Notice ¶ 28.

with Section 7 statutory language, but ask for further input from interested parties before reaching a final decision. This would be in line with the goals of Section 7, promoting expeditious review of new technologies and services, without potentially compromising the Commission's evaluation and forcing a rushed resolution of a Section 7 proceeding that would be better served with a longer, more in-depth review.

**V. THE COMMISSION SHOULD TAKE STEPS TO ENSURE THAT CURRENT COMMISSION RESOURCES ARE NOT STRAINED BY THE NEW REQUIREMENTS OF THE SECTION 7 PROCESS.**

TIA applauds the Commission's commitment to usher in new technologies quickly via rules implementing new Section 7 procedures. However, the ICT industry needs to be assured that, in the Commission's desire to implement the new rules, existing entities receive continued support from the FCC and OET with respect to testing, certification, Knowledge Database rulings, and rule revisions as needed. This work cannot be ignored at the expense of a new technology or service that operates outside of these existing families of technologies. To ensure this crucial work continues, the Commission must have a plan for necessary staffing, budget, and resources in order to accommodate new work expected under its Section 7 proposal.

**a. Evaluation of Section 7 Proceedings Could Impose Additional Burdens on the Office of Engineering and Technology.**

Over the past twenty years, the Commission has successfully outsourced large bodies of its certification duties to third-party Telecommunications Certification Bodies ("TCBs") and overseen highly successful self-approval equipment authorization procedures.<sup>20</sup> On an annual basis, the TCBs currently issue over 20,000 certifications to existing ICT companies. As the Commission is aware, the implementation of 5G and next generation Radio Local Access

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<sup>20</sup> See, e.g., 47 C.F.R. § 2.901, *et seq.*

Network (“RLAN”) technologies will likely result in a greater number of devices coming before the Commission for approval. In addition to the sheer number of devices expected to support a growing diversity of Internet of Things (“IoT”) applications, at least some of these devices will raise novel issues. Given the influx of these 5G, RLAN, and IoT devices and technologies, both the number of certifications issued by TCBs and the work confronting OET are expected to rise in the coming years.

Though the Commission’s push over the last twenty years to outsource certification efforts has been a success for all parties involved, OET resources remain strained. The Commission’s 2019 annual budget shows that the number of full time employees at OET is at a historical low, and fulfilling the requirements of the Notice’s Section 7 proposal will involve necessary investment into existing Commission lab as well as additional attention of existing staff.<sup>21</sup> As a result, certain devices that still require OET certification can find themselves encountering large wait times, resulting in added expenses to the applicant. For devices approved via product-specific, one-to-one negotiations with staff, such as millimeter wave devices, can proceed for months before reaching a determination.<sup>22</sup> While TIA supports the Commission’s effort to create new Section 7 procedures, it is imperative that the Commission manages its budget, staffing needs, and resources appropriately so that it can encourage and promote new technologies without causing backlogs in its already ambitious workload.

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<sup>21</sup> See Federal Communications Commission Fiscal Year 2019 Budget Estimates to Congress at 16 (Feb. 2018) (available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-349145A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-349145A1.pdf)). The 2019 budget lists OET as having 72 full time employees, the lowest number of FTE employees reported for OET on available FCC Fiscal Year Budgets.

<sup>22</sup> See FCC, OET, Pre-Approval Guidance, KDB Publication 388624 D01 v11 r01 (Oct. 16, 2015) (setting forth procedures for TCBs to seek Commission oversight of equipment approval when “compliance reviews procedures are not fully developed.”).

**b. The Office of Engineering and Technology Should Consider Outsourcing Additional Functions to Third Party Certification Laboratories.**

As discussed above, the Commission and OET have worked successfully over the past twenty years to utilize third-party TCBs to aid in the certification process. In order to ensure that OET staff has sufficient bandwidth to cover the new Section 7 procedures and expanded growth under existing technologies, the Commission should examine OET functions currently reserved to the Commission for their potential to be outsourced to TCBs as well as identify regulations and processes that can be streamlined in order to relieve unnecessary burdens on OET staff.

OET should consider at maximum annual revisions to the Pre-Approval Guidance List to ensure procedures keep pace with industry. For example, there was a two-year lag between the most recent revision to the Pre-Approval Guidance List and the previous revision.<sup>23</sup> Technology is simply moving too quickly for a two-year delay. For example, certifications for devices listed in Section B of the Pre-Approval Guidance List, “Devices for which a sample must be submitted to the FCC for pre-approval testing prior to approval by a TCB,” could likely be handled fully by TCBs.<sup>24</sup> Additionally, the Commission should further consider the Recommendations for Removing Obsolete or Unnecessary Technical Rules working group’s suggestion at the July 8, 2017 meeting of the Technology Advisory Council to explore how low-power wireless devices could be moved from a certification process to a Supplier’s Declaration of Conformity

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<sup>23</sup> See FCC, OET, Pre-Approval Guidance List, KDB Publication 388624 D02 v16 r03 (Apr. 9, 2018).

<sup>24</sup> Section B of the Pre-Approval Guidance List includes Unlicensed National Information Infrastructure devices with Dynamic Frequency Selection capability, White Space Devices operating under Part 15 Subpart H, and Citizen Broadband Radio Service Devices.

standard.<sup>25</sup> By eliminating existing technical rules that require OET's resources and staff attention, the Commission will be better situated to encourage new technologies and services without straining OET's existing resources.

## **VI. CONCLUSION**

TIA supports the Commission's efforts to encourage new services and technologies that are in the public interest via the proposed Section 7 rules, and appreciates this opportunity to provide our input on these important procedures.

Respectfully submitted,

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<sup>25</sup> Summary of June 8, 2017 meeting of the Technical Advisory Council, available at <https://transition.fcc.gov/bureaus/oet/tac/tacdocs/meeting6817/TAC%20Meeting%20Summary%206-8-2017.pdf>