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

In the Matter of	)	
	)	
Fostering Innovation and Investment in the Wireless Communications Market	)	GN Docket No. 09-157
	)	
	)	
A National Broadband Plan For Our Future	)	GN Docket No. 09-51

COMMENTS OF MITCHELL LAZARUS

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Mitchell Lazarus, a member of the law firm Fletcher, Heald & Hildreth, PLC, files these comments in the above-captioned proceeding.[1]

My interest in the proceeding comes from having represented proponents of many of the innovative radio-based technologies considered by the Commission over the past 25 years.

I submit these comments in my own name. Positions expressed here are not necessarily those of my firm or my firm's clients.[2]

A. SUMMARY

These comments respond to the following passage in the NOI:

> [W]e are aware that Commission policies and processes can also hinder the progress of innovation and investment. At times, we have seen innovators subjected to lengthy regulatory processes . . . that can be an obstacle to progress in the wireless arena. A goal of this inquiry is to initiate a

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1 *Fostering Innovation and Investment in the Wireless Communications Market*, GN Docket Nos. 09-157, 09-51, Notice of Inquiry ("NOI"), FCC 09-66 (released Aug. 27, 2009).

2 **About the author**: In 25 years of practice before the Commission, Mitchell Lazarus has been lead proponent (and occasional opponent) in dozens of technical rulemakings and waiver proceedings. He holds a law degree from Georgetown University Law Center, degrees in electrical engineering from MIT and McGill University (master's and bachelor's, respectively), and a Ph.D. in experimental psychology from MIT. He is admitted to the practice of law in the District of Columbia and the Commonwealth of Virginia.

> dialogue with stakeholders on how to remove any unnecessary impediments caused by the Commission's policies and rules.[3]

The Commission's Rules are based largely on the technologies in place when they were written. New radio-based technologies often fail to satisfy those rules. The more novel an innovation, the less likely it is to comply. In consequence, a new wireless technology may need a Commission rulemaking or a waiver before it can reach the market.

Technical proceedings in general, including those to authorize new technologies, have been dismayingly slow.

I am not primarily concerned here with proceedings in which the opposition establishes a credible threat of harmful interference to incumbent operations. Recent examples of these are TV "white space" and ultra-wideband.[4] The rules that emerge from such disputes may have complex safeguards to limit interference. Industry participants understand that finding the right balance among multiple, well-supported positions takes time.

Rather, these comments address the more "benign" proposals that present no serious risks to other users. While most proposals are opposed, the opposition in the cases of interest here is either frivolous (such as interference resulting only from astronomically unlikely conditions) or is fully addressed, as when the proponent offers reduced power, a change of frequency plan, or some other measure that effectively resolves the threat.[5]

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[3] NOI at ¶ 5.

[4] *See generally* ET Docket Nos. 04-186 & 02-380 (TV white space) ; ET Docket No. 98-153 (ultra-wideband).

[5] For example, the proponent of one new technology offered to install its device only outside the interference radius claimed by the opponent, even while disputing the opponent's data. The Commission's waiver order incorporated that offer as a condition. *UltraVision Security Systems, Inc.*, 23 FCC Rcd 17632 at ¶¶ 10, 15, 21(4) (2008).

Requests to approve a benign technology should be granted quickly. They are not. Nowadays a rulemaking typically takes 2-5 years, and a waiver, about two years, even for harmless technologies.

These delays are an obstacle to innovation. Often a radically new technology comes from a small, privately-funded start-up. Its only product may be the one awaiting Commission approval. These companies may lack the resources to survive a lengthy FCC proceeding.

Below, I discuss some causes of delay, from the practitioner's standpoint: particularly court-imposed paperwork burdens and a system for public participation that both floods the Commission with unhelpful views and prolongs the bickering among better-informed parties. I have suggestions for addressing both of these problems.

A recent magazine article, directed to the electrical engineering community, addresses some of the same issues.[6] A copy is attached for the record, and is also available on the Internet.[7]

B. REGULATORY DELAY IS A SIGNIFICANT OBSTACLE TO INNOVATION.

My office phone rings. The caller says he runs a small start-up. Their one product is a novel radio-based device, still in development. We discuss its frequency usage, power, modulation, and so forth. "It doesn't comply with the FCC's technical rules," I tell him. "As things stand, you can't market it in the U.S. But it's obviously in the public interest, and not a likely source of interference. That makes it a good candidate for a rule change. Or possibly a waiver, which is usually faster."

"Great! How long will that take?"

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[6] Mitchell Lazarus, *Radio's Regulatory Roadblocks: How the FCC slows new wireless technologies – and what to do about it*, IEEE Spectrum, Sept. 2009, at 42.

[7] http://www.spectrum.ieee.org/telecom/wireless/radios-regulatory-roadblocks/0

"That's the bad news. A rule change takes at least two years, possibly three, maybe four. A waiver takes at least a year, maybe two."

"There's no way to speed that up?"

"No."

"That's a definite problem," my caller says. "This may not work for us at all. I'll have to get back to you."

The estimates above are actually optimistic. The accompanying table shows a few recent examples from my own practice. Not all of these are new technologies; some are just novel applications of, or improvements to, existing technologies. Except as noted, the starting date in the table is the filing of a waiver request or petition for rulemaking, or the release of a Commission Notice of Inquiry. The ending date is the effective date of an initial Commission decision. Times for reconsideration proceedings or court appeals are not included.

All of these proceeding are "benign" in that the proponents fully addressed any serious opposition. That is, the Commission did not impose any restrictions other than those offered by the applicant.[8] I have omitted proceedings in which the Commission significantly altered the proposed rules to accommodate interference concerns, as these can be expected to take longer. Recent examples include TV "white space," broadband over power line ("BPL") (as to some bands), and ultra-wideband.[9] Also omitted are rule interpretations and the like that do not go on public notice, and which generally move much faster.

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[8] A minor exception: In ET Docket No. 98-156, which increased the permitted EIRP for directional antennas in the unlicensed 24-24.25 GHz band, the Commission restricted the increase to the 24.05-24.25 GHz segment. *See Amendment of Part 15 of the Commission's Rules*, 16 FCC Rcd 22337 at ¶ 10 (2001).

[9] The initial BPL rules nevertheless took effect after 21 months, faster than any completed proceeding listed in the table. But even there, subsequent proceedings have left at least some portions of those rules in continuing limbo.

Docket No.	Request	Start	End	Duration
WT 04-143	**rulemaking** – adding narrower bandwidths to 18 GHz fixed service band	05/04/2001[a]	12/29/2006	**66 mos.**
ET 98-156	**rulemaking** – directional unlicensed power at 24 GHz	10/20/1997	02/13/2002	**52 mos.**
WT 07-54	**rulemaking** – smaller antennas in 11 GHz fixed service band	07/14/2004	10/31/2007	**39 mos.**
ET 99-231	**rulemaking** – unlicensed Wi-Fi "g" standard (digital modulation devices)	02/17/2000[b]	07/25/2002	**27 mos.**
ET 06-195	**waiver** – UltraVision Security Systems perimeter security device	10/06/2006	11/20/2008	**25 mos.**
ET 04-373	**waiver** – SafeView security screening device	08/18/2004	08/04/2006	**24 mos.**
WT 09-114	**rulemaking** – conditional licensing on additional channels in 23 GHz fixed service band	11/07/2007	**(pending)**	**23 mos. (to date)**
ET 00-47	**rulemaking** – software-defined radios	03/21/2000	02/04/2002	**22 mos.**
WP 08-63	**waiver** – ReconRobotics surveillance robot	01/11/2008	**(pending)**	**20 mos. (to date)**
WT 09-114	**rulemaking** – adding wider bandwidths to 6 GHz fixed service band	02/04/2008	**(pending)**	**20 mos. (to date)**
WP 09-2	**waiver** – L-3 CyTerra public safety radar	02/22/2008	**(pending)**	**19 mos. (to date)**

NOTES
(a) Date of *ex parte* statement in IB Docket No. 98-172 proposing 18 GHz channel plan.
(b) Date on which Wi-LAN, Inc. filed an Application for Review of denial of certification of an OFDM device under § 15.247. The Commission effectively treated that application as a petition for rulemaking. *Spread Spectrum Devices*, 16 FCC Rcd 10036 (2002).

For a pre-revenue company burning through investors' cash, having to wait two or three years for the first sales dollar can be a deal-breaker. Some companies give up at the starting line. Others try to go forward, but not all of them make it. One of my clients, dependent on a single product, went out of business waiting for Commission action. Others, though they survive, worry that their product will be leapfrogged by competing technologies and be obsolete on release. Even if all goes well and the product eventually sells, it still has lost considerable time on the market, which nowadays is short enough anyway.

Reaching the market early is critical to an innovating entrepreneur. It trumps competitors, pays back investors, gives a leg up in the standards process, and might even brand a

new product category. Regulatory delay threatens all of these benefits. To the individuals involved, the wait for Commission action is enormously frustrating – and all the more so when the product not only offers obvious benefits to the public, but presents no realistic threat of interference.

C. CAUSES OF REGULATORY DELAY

To the modern practitioner, browsing through F.C.C.2d Reports from the 1960s can be a revelation. The Notice of Proposed Rulemaking (NPRM) in technical proceedings was little more than a draft of the intended rule. Six months later, a Report and Order briefly addressed six or a dozen filed comments and adopted the rule in just a few pages total. End of proceeding.

What changed? Why does getting the same thing done today take so much longer?

One source of delay stems from a series of decisions by the U.S. Court of Appeals for the D.C. Circuit. Commission rulemakings are subject to the Administrative Procedure Act (APA). On its face, the APA requires an NPRM to present the "terms or substance of the proposed rule or a description of the subjects and issues involved."[10] That takes just a page or two. But in the 1980s, the court added further requirements. Now the NPRM must also present an "accurate picture of the reasoning that has led the agency to the proposed rule."[11] Moreover, the final rule must be a "logical outgrowth" of the NPRM,[12] with the court ready to strike down a "surprise

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10 5 U.S.C. § 553(b)(3).

11 *Connecticut L&P Co. v. NRC*, 673 F.2d 525, 530 (D.C. Cir. 1982) (fire protection program for nuclear power plants).

12 *Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983) (lead-content limits for leaded gasoline under Clean Air Act).

switcheroo."[13] These rulings mean the NPRM must present and explain a broad enough range of options to cover all plausible outcomes. That makes for a long and complex document.

The court added other requirements for the Report and Order ("R&O") that adopts a rule. Among other things, the R&O must show "what major issues of policy were ventilated . . . and why the agency reacted to them as it did."[14] The agency is obligated to "respond in a reasoned manner to the comments received, to explain how the agency resolved any significant problems raised by the comments, and to show how that resolution led the agency to the ultimate rule."[15] Together, this is a tall order. A losing party that feels the Commission has not provided the required explanations can seek review in the U.S. Court of Appeals. The Commission wins most of these cases, but it does so by consistently preparing a Report and Order that covers the issues, comments, and alternatives in thorough detail. These typically run to scores of single-spaced pages. The drafting and the multiple internal reviews take many hours of personnel effort and many months.

A second category of delay results from vastly expanded public participation. The APA requires the Commission to "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments . . . ."[16] Before about 1995, comments were filed on paper. Preparing them generally took the resources of a law firm or the regulatory department of a large corporation or association. The filings were not only expensive,

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13 *Environmental Integrity Project v. EPA*, 425 F.3d 992, 995 (D.C. Cir. 2006) (permits for major stationary sources of air pollution).

14 *Automotive Parts Ass'n v. Boyd*, 407 F.2d 330, 338 (D.C. Cir. 1968) (requirement for automobile front-seat head restraints).

15 *Rodway v. U.S. Dept. of Agriculture*, 514 F.2d 809, 817 (D.C. Cir. 1975) (nutritional adequacy of food stamp rules).

16 5 U.S.C. § 553(c).

but publicly committed the filing party to a set of positions. They were not undertaken lightly. Few technical proceedings drew more than a dozen or so comments.

Today, electronic filing allows for broad participation at low cost. The key parties to a proceeding still prepare their comments with great care. But easy access over the Internet now draws a lot of more casual comments as well. Some recent proceedings, such as BPL and TV "white space," have each attracted tens of thousands of submissions.

In principle, broad participation ought to improve decision-making by exposing the Commission to a diversity of views. In practice, though, the effect is different. In a proceeding that receives, say, 30,000 submissions, typically only a few hundred, perhaps one percent, might contain helpful information. Many of the rest are copy-and-paste productions from mass emails sent out by interest groups. Others are more spontaneous but less informed. Large numbers show little or no understanding of the issues. Some express vehement views completely unrelated to the proceeding.

In a technical dispute, the numbers of comments for or against a proposal should not matter. A former Chief of the Office of Engineering and Technology used to say, "We don't vote on science." One well-reasoned filing supported by good data should outweigh many thousands of off-topic rants. In practice, this means that 99 percent of the filings in a heavily subscribed technical proceeding ought to have no effect on the outcome. Yet they still must be read and tabulated, adding to the Commission's workload with little benefit in return.

After the comment period closes, interested parties may meet with Commissioners or staff to press their views. They may also continue to submit written data and arguments. Such *ex parte* presentations are permitted for rulemakings and unopposed waivers.[17] The Commission

[17] 47 C.F.R. §§ 1.1204, 1.1206.

sometimes allows them on a case-by-case basis for opposed waivers as well. Ordinarily an *ex parte* presentation made in response to an NPRM or in an opposed waiver proceeding must be placed in the docket.[18]

The frequency of *ex parte* presentations, particularly oral presentations to Commissioners and staff, seems to have increased sharply over the past decade. The trend may be self-reinforcing. Many parties seem to feel the Commission will not take them seriously unless they show up in person. Many more, seeing an opponent's presentation in the docket, feel a need to counter with one of their own. The alternating *ex partes* can drag on for many months, sometimes for years. Occasionally the Commission staff uses these meetings to narrow the issues and test possible compromises. But the process considerably slows the outcome.

A third kind of delay arises after the rules are adopted. The Commission's procedures allow any "interested person" to request reconsideration.[19] These requests used to be the exception, but have now become routine, even though reconsiderations rarely result in significant changes to the rules.[20] All the problems of mass participation and extended *ex parte* periods apply at this phase as well. In the end, the most common effect of reconsideration is just to hold off finality for an extra year or two.

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[18] 47 C.F.R. § 1.1206. *See also Sierra Club v. Costle*, 657 F.2d 298, 402 (D.C. Cir. 1981) (emissions from new coal-fired electric power plants) (requiring *ex parte* advocates to place relevant materials in docket). Presentations in response to a Notice of Inquiry or a petition for rulemaking are exempt from required disclosure, unless the Commission announces otherwise. 47 C.F.R. § 1.1204(b).

[19] 47 C.F.R. § 1.429(a).

[20] Again, the focus here is on benign technologies. When Commission has set up a complex scheme to protect against a realistic threat of interference, it sometimes makes adjustments on reconsideration.

Appeals to the courts are also becoming more common, and also have little practical effect. Long-settled precedent requires the court to defer to the agency.[21] The Commission need not reach the right answer, or even the best of the lot. Any result within a "zone of reasonableness" will suffice.[22] And even where the court feels that standard has not been satisfied, it rarely vacates the rule at issue, but it is far more likely just to remand to the Commission for a better explanation. The most common product of this exercise, too, is postponement of finality.

D. SUGGESTIONS FOR REDUCING DELAY

In view of the foregoing, the following may provide ways to shorten the duration of a rulemaking or waiver proceeding without significantly impairing the quality of the result.

1. Simplify procedures for technical proceedings that lack major social or economic impact.

The court cases that enlarged on the APA requirements dealt with issues of major import. The topics are noted in the citations above: nuclear reactor safety, air pollution, automobile safety, food-stamp nutrition, and so on. Such proceedings can affect the health and well-being of large numbers of people. The proceedings must evaluate the best possible balance between protecting the public and keeping the affected industries viable.

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[21] *Consumer Elecs. Ass'n v. FCC*, 347 F.3d 291, 300 (D.C. Cir. 2003) (court will not intervene unless Commission failed to consider relevant factors or made manifest error in judgment); *MCI Cellular Tel. Co. v.* FCC, 738 F.2d 1322, 1333 (D.C. Cir. 1984) (on "highly technical question," courts must show considerable deference to agency's expertise).

[22] *ExxonMobil Gas Mktg. Co. v. FERC*, 297 F.3d 1071, 1084 (D.C. Cir. 2002), *cert. denied*, 540 U.S. 937 (2003).

In contrast, technical proceedings such as those in the table above do not match this level of importance.[23] While significant to their respective industries, these raise no possibility of adverse effects on the public comparable to, say, fires at nuclear reactors or excessive lead in the atmosphere. Subjecting minor technical issues to the same exacting measures makes little sense. A '60s-style proceeding that conforms to the original language of the APA would adequately serve the public interest, and indeed would affirmatively benefit the public by making better technology available faster.

The Commission does not have the authority to scale back the Court of Appeals mandates, even in cases where they are unneeded. The Commission could, however, ask Congress for a statutory amendment that applies the plain language of the APA, at the Commission's discretion, to proceedings of a primarily technical nature that lack nation-changing social or economic effects. Given the Congress's past support for the speedy approval of new technologies,[24] it might be amenable to the request.

2. Apply streamlined treatment to proceedings for benign technologies.

As discussed above, some petitions for rulemaking and waiver requests describe technologies that present no significant threat of harmful interference. This may be obvious either on the face of the petition or request, or else after amendments to the proposal following opposition. Yet such requests are subject to the same slow processes as those for technologies

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[23] Some Commission proceedings are certainly of comparable weight: the DTV transition, wireless phone allocations and rules, the coming network neutrality NPRM, and others. But those are not the kinds of proceedings at issue here.

[24] *E.g.*, 47 U.S.C. § 157 (policy of United States to encourage the provision of new technologies and services; time limits for decision; burden on opponents).

that threaten significant interference and require carefully-drawn measures to protect incumbent services.

The Commission could move the non-interfering technologies to market faster by fast-tracking their procedures. For example:

Skip the public notice on the petition for rulemaking. Ordinarily the filing of a rulemaking petition triggers a public notice that requests comments and reply comments.[25] From public notice to NPRM typically takes about a full year. For petitions that propose an apparently benign technology, the Commission could go straight to an NPRM, saving most of that year. Procedurally, the Commission can do this by issuing the NPRM on its own motion, notwithstanding a petition for rulemaking being on file.[26] If objections do arise, they can still be fully aired at the NPRM stage. Technologies qualifying for this treatment should include, for example, any that are no more interfering than technologies already in widespread use.

Move non-controversial matters to the head of the line. When the Commission is busy with a heavily disputed technical proceeding (such as DTV or TV white space), minor matters can be caught in the backlog for many months. The collective benefits of moving non-controversial items forward would far outweigh the small additional delay to the contested matters. Following the comment round, any proposal for which interference concerns are fully resolved should be given this expedited treatment.

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[25] 47 C.F.R. § 1.403.

[26] 47 C.F.R. § 1.411. The Commission recently took this approach in *Amendment of Part 101 of the Commission's Rules*, Notice of Proposed Rulemaking and Order, 24 FCC Rcd 9620 at ¶ 22 n.68 (2009) (instituting NPRM on own motion "cognizant of" rulemaking petition). In this case, however, the NPRM did not appear until 20 months after the petition was filed, obviating the main advantage of bypassing the public notice.

Routinely grant waivers pending rulemaking. When the comments on a rulemaking petition show a low likelihood of harmful interference, the Commission can grant a waiver to allow early deployment pending the rulemaking. The waiver can include any safeguards needed – *e.g.*, low power, limited quantities, records of installations, etc. The Commission applied this principle while considering unlicensed digital devices, and held the maximum power under the waiver to levels well below those ultimately authorized in the rulemaking.[27] Such waivers can speed technologies to market by a year or more. Should the waiver turn out to have been improvidently granted, the Commission always has the option of voiding it. Beneficiaries of the waiver will be on notice that they proceed at their own risk.

3. Curtail the ex parte *process.*

As seen from the outside, at least, the seemingly endless alternation of *ex parte* presentations yields diminishing returns as the months go by. Staff attendance at meetings that offer little new information must be a drain on Commission resources. The following steps might ease the burdens and delay, with minimal impact on the parties' ability to make their views known.

Limit the time for *ex parte* presentations. A suitable period might be 60 or 90 days after the close of the comment period. The Commission can announce the cut-off in the NPRM, or give at least 30 days' warning by public notice. For seven days after the cut-off date, parties would be allowed to reply to last-minute points made by opponents, but could not raise new

[27] *Spread Spectrum Devices*, 16 FCC Rcd 10036 at ¶ 26 (2002) (100 mW *vs*. 1 Watt). More recently, the Commission allowed a waiver pending rulemaking in the 23 GHz fixed service band. *Amendment of Part 101 of the Commission's Rules*, Notice of Proposed Rulemaking and Order, 24 FCC Rcd 9620 at ¶ 24 (2009).

issues. There should be two exceptions: parties must be allowed to reply to Commission inquiries, and should be allowed to offer serious, good-faith compromise proposals.[28]

Encourage written over oral *ex parte* presentations. Written presentations take less of the Commission's time, and give opponents a clearer picture of a party's positions. In the same vein, the Commission should announce that it disfavors repeated oral *ex parte* presentations to the same office when those do not include significant new facts, arguments, or compromise proposals. Parties should, however, be freely allowed to make at least one oral presentation to each office considering the matter.

Enforce the rule requiring adequate notice of oral *ex parte* presentations. Following an oral *ex parte* presentation, the party making the presentation is required to place in the docket

> a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[29]

The specifics of this rule are often ignored. The Commission should enforce it, at the very least by announcing it will disregard the contents of presentations where the docketed description does not comply.

Require service *of ex parte* notices on opposing parties, where practicable. When an *ex parte* presentation addresses the positions of a small number of other parties, those making the

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[28] Following passage of the Telecommunications Act of 1996, which required the Commission to complete several rulemakings within short periods after enactment, the Commission advised parties to set out their views in comments and reply comments, and not to rely on subsequent *ex parte* presentations. It further warned that it might cut off oral *ex parte* opportunities. *Commission Announces Streamlined Procedures For Rulemaking Proceedings Implementing Telecommunications Act of 1996*, Public Notice, 11 FCC Rcd 5372 (1996) (missing from FCC database; available on Lexis).

[29] 47 C.F.R. § 1.1206(b)(2).

presentation should be required to serve the others, even if only by email. Many in the bar do this routinely as a courtesy. It is not a significant burden.

Bring in opposing parties to meet at FCC. A former Commissioner sometimes invited opposing parties to debate the issues in her presence. Her legal advisor would moderate; the Commissioner occasionally intervened with questions. When well chaired, these sessions very quickly brought the relevant issues forward. The bureaus might consider a similar approach as part of the *ex parte* process, on an optional basis.[30]

4. Release a brief supplemental NPRM on tentative decisions.

The scope of an NPRM limits an agency's options in the Report and Order. Sometimes a party will refrain from a compromise proposal because it does not plausibly fit within the NPRM. Sometimes an R&O shows the chisel marks of having forced in a provision the Commission had not considered in the NRPM. Sometimes a rule outside the NPRM triggers an issue on reconsideration.[31]

Such problems could sometimes be avoided with a brief Further Notice that lays out a tentative Commission decision. This need not (and should not) restart the proceeding from the beginning. The Further Notice could be only a few pages. It would lay out the proposal with a brief rationale, set a short comment and reply cycle, and bar comments and *ex parte*

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[30] The NOI asks if the Commission should consider ADR techniques, such as negotiated rulemaking, in disputes over whether a new service will cause harmful interference to incumbent services. NOI at ¶ 35. These methods might be worthwhile where the opponent has made a *prima facie* case for harmful interference. In proceedings of the kind discussed here, however, where the opposition is either unfounded from the beginning or has been fully addressed, a negotiated rulemaking would only give the opponent a platform and a degree of leverage to which it is not entitled.

[31] *E.g.*, *Ultra-Wideband Transmission Systems*, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 18 FCC Rcd 3857 at ¶¶ 19, 32 (2003) (acknowledging that adopted rule requiring coordination of ground penetrating radars may not have been anticipated in NPRM).

presentations on other issues. Although the need for Federal Register publication and the comment cycle would delay the proceeding by some weeks, in appropriate cases it will lead to a better result and fewer post-adoption proceedings.

5. Bifurcate non-controversial issues.

The Commission has rarely bifurcated technical proceedings. Sometimes, however, itsdoing so could help to speed new technologies to market. In the BPL rulemaking, for example, some parties proposed operation in the 30-50 MHz band, while virtually all of the opposition concerned other bands. A bifurcation could have allowed 30-50 MHz operation immediately while the rest of the proceeding continued.[32] In some cases it may be practical to authorize operation in the short term, under reduced power or other limitations, while the rulemaking continues on the original proposals.[33]

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[32] As noted above, this rulemaking proceeded quickly nonetheless. Still, a bifurcation would have shielded noncontroversial operation at 30-50 MHz from the uncertainties raised by the subsequent reconsideration, court appeal, and ongoing remand proceedings.

[33] The Commission may have intended this approach in the ultra-wideband proceeding, when it authorized relatively low power initial levels with a promise to revisit those with an eye to possible increases. *Ultra-Wideband Transmission Systems*, First Report and Order, 17 FCC Rcd 7435 at ¶¶ 1, 21, 196, 223, 269 (2002). After seven years, however, the reevaluation has not taken place.

CONCLUSION

The Commission can speed the rate of technological innovation by simplifying and streamlining its procedures for those proposals that do not create a significant threat of harmful interference.

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