

## The Free State Foundation

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## News Release

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### FSF's Seth Cooper Calls on States to Take a More Targeted Merger Review Approach

*Saddling Mergers with Too Many Conditions by Too Many Different Regulators Unnecessarily Increases Costs*

**ROCKVILLE, MD** – The Free State Foundation published a new study in the [Perspectives from FSF Scholars](#) series suggesting policymakers free up today's dynamic telecommunications market by reforming state regulatory reviews of telecom carrier mergers. In ["Multiple Government Regulators Burden Telecom Mergers with Too Many Conditions,"](#) Seth Cooper, Research Fellow at the Free State Foundation, maintains that "[t]he existing multi-level, multi-agency telecommunications merger review process involves costly, time-consuming, redundant reviews by federal and state regulators. And it often results in merging carriers being subjected to numerous approval conditions that are unrelated to specific harms posed by such mergers." Cooper argues that subjecting merging telecom carriers to two reviews by federal agencies as well as dozens of reviews by state public utility commissions imposes significant costs without commensurate benefits. "Over-reviewing" telecom mergers can delay, or even preclude, mergers that would create long-term efficiencies and innovation that would benefit consumers through lower prices and improved service offerings.

In the *Perspectives*, Cooper writes that "[t]he existing policy of federal and state telecom merger over-reviewing and over-conditioning can delay mergers that would make the market more competitive and help give merged companies economies of scale and scope that could better create and deliver innovative services to consumers." As discussed in the paper, some of the downsides of today's multiple state merger review process include:

**- Compounding Compliance Costs.** "[M]erging telecom carriers seeking approval from a dozen or more state PUCs are saddled with significant compliance costs. At the state level, public hearings as well as private meetings with state utility commissioners, their staffs, and state-appointed 'consumer advocates' or 'public counsels,' take up considerable amounts of company resources and employee hours. Lengthy, protracted negotiations between merging companies and regulatory officials and staffs give rise to additional direct costs, in addition to opportunity costs that merging companies experience while they remain in merger approval limbo."

**- Compounding Condition Costs.** "[S]tate PUC merger reviews impose direct costs for review process compliance as well as both direct costs and indirect opportunity costs for review process delays." "The willingness of state PUCs to impose merger conditions otherwise beyond their general rulemaking authority as well as conditions unrelated to perceived market power or consumer harms arising from the transaction makes the process inviting to outside interest groups who wish to manipulate the outcome."

**- Diminishing Returns.** "Once market power concerns are addressed by FTC-DOJ reviews, a law of diminishing returns kicks in with regard to subsequent FCC and state PUC merger reviews. There is little reason to expect seven, thirteen, or two-dozen government agencies will provide an optimum outcome that would not otherwise be reached through reviews conducted by one, two or even a few government agencies."

Cooper concludes telecom merger reforms should be made so that the scope of review and any possible merger conditions be narrowly focus on anti-competitive conduct and likely consumer harms that are unique to individual states' telecommunications market. "To the extent the states have a legitimate interest in considering potential harms to consumers that are claimed to arise uniquely from the particular intrastate competitive impact of the merger, they should do so in a much more streamlined fashion than they do now," writes Cooper. Cooper suggests that state regulators' general rulemaking power should be the preferred policymaking tool for addressing intrastate telecom market concerns rather than *ad hoc* telecom merger reviewing power.

"Multiple Government Regulators Burden Telecom Mergers with Too Many Conditions" is the thirty-first in this year's *Perspectives from FSF Scholars* series. A PDF version of the paper is available on the Free State Foundation's website [here](#).

The Free State Foundation is an independent nonprofit, tax-exempt, free market-oriented think tank.

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