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# THE FREE STATE FOUNDATION

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## Media Advisory

July 26, 2018

Contact: Randolph May at 301.984.8253

### **[FSF's Randolph May and Seth Cooper Urge the FCC to Affirm that Wireless Is Effectively Competitive and that Wireless and Wireline Increasingly Are Substitutable](#)**

**Free State Foundation President Randolph J. May and Senior Fellow Seth L. Cooper submitted [comments](#) today regarding the state of competition in the wireless market. FSF's comments urge the Commission to reaffirm that the mobile service market is “effectively competitive” and to acknowledge that wireless and wireline services increasingly are substitutable.**

Below is the **Introduction and Summary** of the Free State Foundation's comments submitted today.

**A PDF of the complete FSF comments, with footnotes, is [here](#).**

### **Introduction and Summary**

These comments are submitted in response to the Commission's request for comments regarding RAY BAUM'S ACT of 2018's requirement that the Commission publish a report in which it shall “assess the state of competition in the communications marketplace, including competition to deliver voice, video, audio, and data services” by “providers of commercial mobile service.” In these comments we show that the Commission should reaffirm that the commercial mobile service market is “effectively competitive.” Further, consistent with its new statutory requirement that the agency's forthcoming communications report consider the effects of intermodal competition, these comments present evidence for wireless substitutability and urge the Commission to recognize wireless as a substitute or potential substitute for wireline.

In its [Twentieth Wireless Competition Report](#) (2017), the Commission found that the market for mobile wireless broadband is “effectively competitive.” The Commission's affirmative report finding was based on key market metrics for 2016 and early 2017. For example, as of December 2016, 92% of the U.S. population had access to four or more service providers offering 3G technology or better, up from 82% at the start of 2014. And 89% had access to at least four service providers offering 4G LTE technology, up from 41% in mid-2015.

Mobile wireless speeds have increased during and after the periods covered in the *Twentieth Report*. Mean LTE download speeds increased to 23.5 Mbps in the first half of 2017. Those download speeds increased 20.4% to 27.33 Mbps between the first half of 2017 and the first half of 2018. Further, wireless connections rose to 396 million at the end of 2016. According to CTIA, year-end 2017 connections exceeded 400 million. Data cited in the *Twentieth Report* put average monthly data usage per smartphone subscriber at 3.9 GB. CTIA estimates that smartphones generated 5 GB of data per month in 2017.

Meanwhile, prices have continued to decline. In 2016, Average Revenue per User (ARPU) fell 7%, to \$41.50. CTIA estimates year-end 2017 ARPU dropped to \$38.66. Between 2012 and 2016, while overall CPI rose 4.5%, the annual Wireless Telephone Services CPI decreased 8%. Pro-consumer pricing options have also increased. In 2016 and early 2017, “unlimited” and “free data” postpaid plans became much more widely available. Free data plans exempt certain types of content, especially streaming video and music, from subscribers’ monthly data allowances.

The developments with regard to postpaid plans have blurred even further the line between the postpaid and prepaid services as providers of both postpaid and prepaid plans increasingly interweave elements that formerly characterized one segment or the other into their various offerings. For example, some postpaid plans now require no mandatory contract, while prepaid plans now offer consumers a greater variety of phones that more closely match those offered to postpaid customers. The bottom line is even more consumer choice in the wireless marketplace regarding pricing and other service characteristics.

Given the strong evidence of competition, consumer choice, declining prices, and technological dynamism, the *Twentieth Report* found, correctly, that the commercial mobile services market is effectively competitive. Recent trends certainly support reaffirmation of that finding in the Commission’s forthcoming competition report.

Pursuant to RAY BAUM’S ACT, the Commission will release its first comprehensive report on the state of competition in the communications marketplace later this year. This report will include competitive analyses and findings regarding the state of “competition to deliver voice, video, audio, and data services” among providers of telecommunications, commercial mobile service, multichannel video programming distributors, broadcast TV stations, satellite communications, Internet service providers, and other services. In assessing competition, RAY BAUM’S ACT also requires that “the Commission shall consider all forms of competition, including the effect of intermodal competition.” The Commission’s forthcoming report should therefore include an assessment of wireless/wireline substitution’s existence and effects.

Broadband networks increasingly are characterized by technological and service convergence and mobile networks are a key part of this convergence. Cisco Systems reported that 60% of global mobile data traffic was offloaded onto fixed networks through Wi-Fi or femtocells in 2016. In 2017 and 2018, Comcast and Charter Communications launched hybrid Wi-Fi/cellular mobile wireless services, and DISH Networks plans to use spectrum licenses to provide Internet-of-Things (IoT) and 5G services. Convergence is also evidenced by Ligado’s modification applications to launch an integrated satellite/terrestrial IoT network using mid-band spectrum, by nationwide geostationary fixed-satellite broadband service coverage by Hughes Network Systems and ViaSat, and by fixed wireless broadband services that combine Wi-Fi connections, cell towers, and backhaul.

This convergence – which is a key predicate for wireless/wireline substitution – has accelerated as 4G LTE mobile broadband capabilities have made mobile broadband services a viable platform for viewing video and other data-rich content. Reports indicate that mobile data usage – and mobile video viewing, in particular – are increasingly popular with consumers. For instance, an AOL study published in early 2017 found “On average, 57% of consumers globally watch videos on a mobile phone every day.” And the June 2018 Ericsson Mobility Report forecasted that global mobile video traffic will account for 73% of all mobile data traffic by 2023. Data collected by NTIA shows that wireless-only broadband households doubled between 2013 and 2015, from 10% to 20%. A June 2018 U.S. consumer survey by the Internet Innovation Alliance indicates:

“Fully 43% of all respondents report a preference for mobile access or report no preference as compared to 47% expressing a fixed broadband preference.” The latest National Health Interview survey on wireless substitution states: “53.9% of American homes “had only wireless telephones... during the second half of 2017.” Thus, fixed and mobile services increasingly appear to provide further competitive constraints on each other in the communications marketplace – above and beyond the competition that already exists within each segment.

The *Twentieth Report* offered no analysis of wireless substitution or competition between wireless and other platforms. Further, the *2018 Broadband Progress Report* disagreed that mobile services are full substitutes for fixed services. But the evidence of substitution cited above and RAY BAUM’S Act mandate for assessing intermodal competition should lead the Commission to rethink its approach and recognize the existence of wireless/wireline substitutability.

In sum, a close examination by the Commission of wireless/wireline substitution and cross-platform competition is overdue and it should be included in its forthcoming report. The policy implications of *or* for wireless/wireline substitutability would be worked out over time. But as a general matter, such substitutability no doubt should prompt the Commission to reduce regulatory burdens applicable to both wireline and wireless providers, thereby freeing up dynamic market forces to further enhance consumer welfare.

**A PDF of the complete FSF comments, with footnotes, is [here](#).**

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**Randolph J. May**, President of the Free State Foundation, is a former FCC Associate General Counsel and a former Chairman of the American Bar Association's Section of Administrative Law and Regulatory Practice. Mr. May is a past Public Member and a current Senior Fellow of the Administrative Conference of the United States, and a Fellow at the National Academy of Public Administration.

Mr. May is a nationally recognized expert in communications law, Internet law and policy, and administrative law and regulatory practice. He is the author of more than 200 scholarly articles and essays on communications law and policy, administrative law, and constitutional law. Most recently, Mr. May is the co-author, with FSF Senior Fellow Seth Cooper, of the recently released [#CommActUpdate - A Communications Law Fit for the Digital Age](#) as well as [The Constitutional Foundations of Intellectual Property](#), and is the editor of the book [Communications Law and Policy in the Digital Age: The Next Five Years](#). He is the author of *A Call for a Radical New Communications Policy: Proposals for Free Market Reform*. And he is the editor of the book, *New Directions in Communications Policy* and co-editor of other two books on communications law and policy: *Net Neutrality or Net Neutering: Should Broadband Internet Services Be Regulated* and *Communications Deregulation and FCC Reform*.

**Seth L. Cooper** is a Senior Fellow at The Free State Foundation. He previously served as the Telecommunications and Information Technology Task Force Director at the American Legislative Exchange Council (ALEC), as a Washington State Supreme Court judicial clerk and as a state senate caucus staff counsel. He is an attorney, and he graduated from Seattle University School of Law with honors. Mr. Cooper's work has appeared in such publications as *CommLaw Conspectus*, the *Gonzaga Law Review*, the *San Jose Mercury News*, *Forbes.com*, the *Des Moines Register*, the *Baltimore Sun*, the *Washington Examiner*, the *Washington Times*, and *The Hill*.

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