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THE FREE STATE FOUNDATION

A Free Market Think Tank for Maryland.....Because Ideas Matter

Media Advisory

May 22, 2018

Contact: Randolph May at 201-285-9926

FSF Urges the FCC to Adopt Its Proposal to Encourage New Technologies and Services

Free State Foundation President Randolph J. May and Senior Fellow Seth L. Cooper submitted comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking to establish guidelines and procedures for implementing Section 7 of the Communications Act. FSF's comments urge the Commission to adopt its Section 7 proposal, but to modify it to better achieve prompt agency approval of new technologies and services.

Below are the **Initial Paragraphs** of the Free State Foundation's comments submitted yesterday.

A PDF of the full comments is [here](#).

Initial Paragraphs

These comments are submitted in response to the Commission's request for public comments regarding its Notice of Proposed Rulemaking to establish guidelines and procedures for implementing Section 7 of the Communications Act. The proposal's purpose is to encourage new technologies and services. While these comments urge the Commission to adopt its Section 7 proposal, they also urge the Commission to modify its proposal to better achieve Section 7's purposes and to overcome regulatory inertia against prompt agency approval of new technologies and services.

More specifically, we recommend that the Commission adopt a rebuttable presumption that applications and permits determined by the Commission to offer a "new technology or service" within the scope of Section 7 are in the public interest absent clear and convincing evidence to the contrary. Also, we recommend the Commission adopt a "deemed granted" provision that would be triggered if the Commission fails to act on the merits of a petition or application within Section 7(b)'s one-year timeframe.

The Notice recognizes, correctly, that "outdated technical rules and regulations can require proponents of new technologies or services to either seek a waiver of those rules or petition the Commission to conduct a rulemaking." The Notice also rightly observes that competitor petitions "to deny or oppose the introduction of new technologies or services" can delay or prohibit public interest benefits to consumers.

Section 7 of the Communications Act provides:

(a) It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this chapter shall have the burden to demonstrate that such proposal is inconsistent with the public interest.

(b) The Commission shall 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. If the Commission initiates its own proceeding for a new technology or service, such proceeding shall be completed within 12 months after it is initiated.

Proactive use of Section 7 could prove useful at different points in the ongoing development and rollout of next-generation broadband services, including innovative 5G wireless services, that may employ new technologies. In a February 2017 *Perspectives from FSF Scholars*, attached as Appendix A, we proposed that the FCC should clear away regulatory obstacles to market investment innovation by relying more on its Section 7 authority. The Commission's proposed rulemaking to invigorate Section 7 for promoting new technologies and services is therefore a welcome development.

A PDF of the full comments 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 the *San Jose Mercury News*, the *Des Moines Register*, and the *American Spectator*.

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***The Free State Foundation
P. O. Box 60680
Potomac, MD 20859***

**Tel: [301-984-8253](tel:301-984-8253)
www.freestatefoundation.org**



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