

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

## REPLY COMMENTS OF THE FREE STATE FOUNDATION<sup>1</sup>

These reply comments are submitted in response to the initial comments filed in this proceeding responding to the Commission’s Third Further Notice of Proposed Rulemaking.<sup>2</sup>

A review of the initial comments submitted reveals, unsurprisingly, that there is widespread agreement that the *end* sought by the Commission's proposal – to reduce, to the maximum extent feasible, the use of contraband cellphones in prison facilities – is important. Perhaps also unsurprisingly, there is widespread agreement among interested parties that the *means* proposed by the Commission to achieve its objective is highly problematic. This is because of the acknowledged certainty that, if the permissive cellphone jamming proposal is adopted in its current form, harmful interference will occur to lawful communications. Given the substantial doubts regarding the Commission's legal authority to allow cellphone jamming which

<sup>1</sup> These reply comments express the views of Randolph J. May, President of the Free State Foundation. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. Pertinent to these reply comments, Mr. May is a former Chair of the American Bar Association's Section of Administrative Law and Regulatory Practice, a former Public Member and present Senior Fellow of the Administrative Conference of the United States, and a Fellow of the National Academy of Public Administration. The Free State Foundation is a nonpartisan, non-profit free market-oriented think tank.

<sup>2</sup> *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, Third Further Notice of Proposed Rulemaking, FCC 25-65 (rel. Sept. 30, 2025) (“Third FNPRM”).

causes harmful interference to lawful communications, this is a paradigmatic case in which the agency should employ a properly constructed pilot program to gather additional technical information before proceeding to adopt final rules.

Milton Friedman, the winner of Nobel Prize in Economic Sciences, once declared: "One of the great mistakes is to judge policies by their intentions rather than their results." In this proceeding, no one doubts the FCC commissioners have good intentions. But absent further information and refinement garnered through a pilot program, it's highly unlikely that the results of the Commission's proposal will match the intentions.

My purpose in filing these reply comments is not to offer an opinion regarding the engineering aspects of the interference issues or the questions raised concerning the Commission's legal authority to adopt its proposal "as is." Rather, in light of the concerns expressed across a broad spectrum (pun intended!) of users of wireless communications, it is to advocate for the adoption of a pilot program. Both users of authorized licensed communications represented by CTIA (for example, AT&T, Verizon, T-Mobile) and other organizations and users of unlicensed communications represented by the Wi-Fi Alliance all expressed the same concern regarding interference to their communications attributable to what would become permissive cellphone jamming.

Considering the widespread concerns expressed, several commenters, including CTIA and AT&T, suggested that the Commission adopt a pilot program. For example, AT&T stated: "Any further action on jamming must be contingent on the successful completion of a pilot program in tightly controlled environments."<sup>3</sup> CTIA explained:

If the FCC moves forward, then as a crucial first step, it should begin with carefully monitored pilots and use the information gathered from that exercise to determine what technical requirements and limitations should be applied before it authorizes a jamming

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<sup>3</sup> Comments of AT&T Services, Inc., Docket No. 13-111, December 29, 2025, at 16.

framework more widely. Widely authorizing jamming in correctional facilities without evidence that it can be accomplished safely would amount to a nationwide test of an as yet unproven approach with obvious downside risks....

A limited pilot trial could produce data regarding the extent to which jamming systems are able to avoid unintended spillover effects on lawful communications and under what circumstances. Analyzing the results of the trial would then help the Commission develop technical rules specifically tailored to jamming, which necessarily will require stricter limits than those applicable to CMRS services.<sup>4</sup>

I agree the Commission should adopt a properly constructed pilot program and carefully analyze the results before adopting any final rules. It is noteworthy that the Administrative Conference of the United States (ACUS), an agency established for the specific purpose of improving government regulation, and of which I am presently a Senior Fellow, has recognized that federal agencies can benefit from gathering data through pilot programs to test regulatory alternatives before implementing final rules. Administrative Conference Recommendation 2017-6 ("Learning from Regulatory Experience") states: "In terms of understanding possible alternatives and how well they might work in practice, agencies benefit from having information from experience with different solutions."<sup>5</sup> This ACUS Recommendation explicitly suggests that, when additional information would be useful, agencies should "initiate or support new pilot programs that produce randomized study data."<sup>6</sup> The formal recommendation declares: "Agencies should seek opportunities to collect data to learn the most effective way to design their rules and analyze the effects of their rules. They can learn from experience at one or more stages of the rulemaking process, from pre-rule analysis to retrospective review. Before adopting a rule, agencies can learn from pilot projects...."<sup>7</sup>

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<sup>4</sup> Comments of CTIA, Docket No. 13-111, December 29, 2025, at 27.

<sup>5</sup> Administrative Conference Recommendation 2017-6 ("Learning from Regulatory Experience"), December 15, 2027, at 2.

<sup>6</sup> Id., at 7.

<sup>7</sup> Id., at 13.

It's also significant that at least two, if not more, of President Trump's Executive Orders this year rely on the use of pilot programs to gather technical data to inform regulatory proceedings – the "eVTOL/Drone Regulatory Pilot Programs"<sup>8</sup> and the "Nuclear Regulatory Reform and Advanced Reactor Pilot Program"<sup>9</sup> The issues in each regulatory proceeding are different, of course, and the specific objectives of the pilot programs differ in each case. But the overall objective in each instance is to aid regulators in gathering information to adapt regulatory programs to real-world environments.

In conclusion, the Commission should initiate a properly constructed pilot program in this "Combat Contraband" proceeding to, as CTIA put it, gather information "to determine what technical requirements and limitations, beyond those already imposed in the affected spectrum bands, should be applied to protect lawful communications before authorizing a jamming framework more widely."<sup>10</sup> This approach would be consistent not only with the ACUS Recommendation, but the Trump Administration's use of pilot programs in regulatory proceedings. Above all, it would be "common sense regulation" consistent with sound regulatory reform principles.

Respectfully submitted,

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<sup>8</sup> See Section 6 of "Unleashing American Drone Dominance," Executive Order 14307, 90 Fed. Reg. 24727, June 6, 2025.

<sup>9</sup> See "US Department of Energy Reactor Pilot Program, May 23, 2025, at: <https://www.energy.gov/us-department-energy-reactor-pilot-program>.

<sup>10</sup> Comments of CTIA, at 5.