

# Lucky Number 7? FCC Proposes Section 7 Rules to Fast-Track Review of New Technologies

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On February 22, as part of its effort to accelerate the deployment of new and innovative technologies, the FCC adopted a [Notice of Proposed Rulemaking](#) ("NPRM") to develop procedures for implementing section 7 of the Communications Act of 1934 (which was added by a 1983 amendment). Section 7 states that 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." This proceeding presents a valuable opportunity for parties to potentially expedite FCC approval of their services, including petitions or applications that are already pending or are filed before the new rules are adopted.

## Background

While there have been several isolated petitions or applications in the past several decades that have invoked section 7 in an attempt to expedite, the Commission to date has not defined the terms or process for applying the expedited treatment and has operated essentially with no deadlines for action on applications or petitions for rulemaking for a new service or technology.

## NPRM

Section 7 can apply to a wide variety of petitions and applications, including petitions for rulemaking, requests for waiver, and experimental license applications. The proposal is to establish rules that would require the agency, through its Bureaus and Offices, to quickly determine (within 90 days) whether a service or technology is "new" and, if so, to then take action within one year of the filing. The particular "action" is left to the FCC's discretion.

The proposed rules would require petitioners and applicants to expressly request consideration under section 7 at the time of initial filing (although there is also a process to supplement currently pending petitions or applications). The Commission also proposes certain requirements that a petitioner/applicant must meet for a section 7 showing. Entities seeking section 7 treatment must do the following.

- **Describe differentiating aspects:** applicants should include a "detailed description of the proposed technology or service associated with the petition or application, and how it differs from existing technologies or services."
- **Demonstrate that the product is market-ready:** applicants should also include a "showing that the section 7 treatment is "technically feasible and commercially viable." The Commission will not consider a proposed technology or service that is merely theoretical or speculative. To

make this showing, applicants should include the “results of experimental testing, technical analysis, or research.” Although the details surrounding these showings are unclear, these would appear require substantial analyses, likely including technical and/or economic analysis and data.

## **Section 7 Application Evaluation Process**

Whether any technology or service proposed for section 7 treatment is “new” will be evaluated on how it “differs from previously-approved technologies or services” and on factors including:

- whether it “has not previously been authorized by the Commission”;
- whether it includes “significant enhancements” that provide new functionalities or improved performance (with a focus on quantitative/qualitative improvements or on “what is so new” that warrants section 7 treatment); and
- “other factors set forth by the petitioner or applicant, or factors that the Commission deems appropriate for the technology or service under review.”

The draft NPRM suggests the FCC would favor a strong public interest showing that focuses on one or more of the following:

- promotion of innovation and investment;
- introduction of new competitive choices to the public;
- enhanced accessibility to people with disabilities; or
- new or significantly improved services in unserved and underserved areas.

## **Political Controversy**

The Commissioners were not entirely united in support of this NPRM. Chairman Pai and Republican commissioners O’Rielly and Carr welcomed the item as a way to catalyze the deployment of innovative technologies and reduce bureaucratic inertia. However, Democratic Commissioner Clyburn pointed out that many innovative technologies came to fruition without needing special treatment from the FCC. Commissioner Rosenworcel dissented, citing to the difficulties the FCC had in the past implementing the so-called “Pioneer’s Preference” program. That program offered preferential licensing treatment for entities making significant contributions to new spectrum technologies or services. However, Commissioner Rosenworcel argues that the Pioneer’s Preference Program ended up flooding the FCC with applications, proved difficult to implement, and tied up the agency in costly litigation.

## **Next Steps**

Comments will be due 45 days and reply comments 75 days after the NPRM is published in the *Federal Register*.

Section 7 treatment can be a useful tool to empower providers to push the FCC to streamline approval of their services, but requires substantial analysis and additional process. Applicants should carefully consider how to satisfy some of the more demanding showings, such as demonstrations of technical feasibility and commercial viability, and should do so even while the NPRM is pending.

Kelley Drye & Warren’s Communications group has decades of experience representing innovators

and providers of competitive services, as well as extensive experience with new wireless technologies and experimental licensing.