

18 April 2011

The Honorable Julius Genachowski  
Chairman, Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Mr. Chairman:

Spectrum policy decision-making by the Federal Communications Commission (FCC) is critical to many sectors of the U.S. economy and specifically to the industries which employ many of the 210,000 members of IEEE-USA. The intent of this letter is to offer suggestions to the agency to improve the transparency and speed of spectrum policy decisions. These suggestions focus on improving the timeliness of policy determinations for innovative wireless technologies in order to encourage capital formation for wireless R&D and innovation.

In recent years, the amount of information flowing over wireless networks has grown at over 250 percent per year, with some estimates indicating that the next five years will see an increase in wireless data of between 20 and 45 times 2009 levels, reflecting the increasing use of smartphones, netbooks, and other wireless devices. While much of this demand will be met through increased mobile spectrum as a result of pending FCC proposals and the National Broadband Plan, history has shown that innovative technology has been key to increasing the efficiency of both existing and new spectrum allocations.

While the Obama Administration has proposed increased funding for wireless R&D for the FY 2012 Budget, private sector capital formation has been and will continue to be a key factor in advancing technology in this area. The Commission recognized this in the Wireless Innovation Notice of Inquiry<sup>1</sup> in which it repeatedly raised the connection between innovation and investment.

Many wireless innovations would appear to be subject to the terms of Section 7 of the Communications Act of 1934, as amended.<sup>2</sup> Section 7 is certainly not a perfect piece of legislation, but we are aware of no guidance the Commission has issued to further its goals with respect to what technologies might be classified as “new” or what steps would be involved in making the determinations involved.

By contrast, we note that the Commission has issued two “informal guidelines” to guide the timely consideration of other major issues before it: an “Informal Timeline for Consideration of Applications for Transfers or Assignments of Licenses

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<sup>1</sup> Notice of Inquiry on Fostering Innovation and Investment in the Wireless Communications Market, GN Docket 09-157, August 27, 2009 ([http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-09-66A1\\_Rcd.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-66A1_Rcd.pdf))

<sup>2</sup> 47 U.S.C. 157. The statute states:

(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.

or Authorizations Relating to Complex Mergers”<sup>3</sup> and an “Informal Guideline for Section 10(c) Forbearance Petitions.”<sup>4</sup> The §10(c) actions have a statutory deadline similar in ways to §7, while the merger approvals governed by the first “informal timeline” appear to have no statutory timeliness requirement. Both of these types of decisions are complex and are governed by notice and comment procedures similar to the rulemakings usually confronting new technologies. Yet the Commission routinely meets its own “informal timelines” in such cases, most recently the NBC Universal/Comcast merger.

In view of the long, drawn out delays in several recent new technology rulemakings and their possible affect on deterring investment in innovative wireless R&D, we urge the Commission to develop an “informal timeline” for proceedings dealing with innovative wireless technologies subject to §7 and to implement public tracking systems of its performance of these proceedings similar to the ongoing tracking for mergers<sup>5</sup> and §10(c) forbearance petitions.<sup>6</sup>

We believe that FCC might wish to emulate the White House’s recent Startup America initiative<sup>7</sup> “to dramatically increase the prevalence and success of America’s entrepreneurs.” Under part of this program the Patent and Trademark Office (PTO) will offer an Enhanced Examination Timing Control Initiative “to give innovators more control over the application processing and support a more efficient market for innovation.” For wireless innovations subject to non-routine FCC approvals, FCC deliberations determine if and when diffusion, and thus positive cash flow, is possible. In contrast, the improved and more timely PTO decisions only scope the level of intellectual property protection were these cash flows possible. We urge the FCC to examine this PTO initiative and consider offering to entrepreneurs parallel programs to resolve policy deliberations on a faster, more predictable basis. While we recognize that Title III technical rulemakings on innovative technologies are subject to more complex Administrative Procedures Act deliberations than PTO patent adjudications, the Commission’s admirable track record in resolving merger issues subject to notice and comment shows that with an informal timeline and management attention even complex decisions can be managed on a more predictable basis.

IEEE-USA stands ready to work with the Commission, National Telecommunications and Information Administration (NTIA), and with industry groups to develop more specific plans to implement these suggestions.

IEEE-USA advances the public good and promotes the careers and public policy interests of 210,000 engineering, computing and technology professionals who are U.S. members of IEEE. For more information, please contact Deborah Rudolph at (202) 530-8333, or at [d.rudolph@ieee.org](mailto:d.rudolph@ieee.org).

Sincerely,



Ronald G. Jensen  
IEEE-USA President

cc: Commissioners Michael Copps, Robert McDowell, Mignon Clyburn, and Meredith Attwell Baker  
Mr. Julius Knapp, FCC Chief, Office of Engineering Technology  
Professor Douglas Sicker, FCC Chief Technologist  
Mr. Lawrence Strickling, Assistant Secretary for Communication & Information, NTIA, U.S. Dept. of Commerce  
Docket 09-157 (Wireless Innovation)

<sup>3</sup> Informal Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Authorizations Relating to Complex Mergers, <http://www.fcc.gov/transaction/timeline.html>

<sup>4</sup> Informal Guideline for Section 10(c) Forbearance Petitions, <http://www.fcc.gov/wcb/cpd/forbearance/timeline.html>

<sup>5</sup> <http://www.fcc.gov/transaction/welcome.html>

<sup>6</sup> <http://www.fcc.gov/wcb/cpd/forbearance/welcome.html>

<sup>7</sup> <http://www.whitehouse.gov/startup-america-fact-sheet>