

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)
)
Space Modernization for the 21st Century) SB Docket No. 25-306

EX PARTE COMMENTS OF TECHFREEDOM

Pursuant to the Press Release issued October 7, 2025,¹ TechFreedom² submits the following ex parte comments in advance of the sunshine period concerning the above-

¹ See Press Release, Fed. Commc'ns Comm'n, FCC Announces Tentative Agenda for October Open Meeting (Oct. 7, 2025), <https://docs.fcc.gov/public/attachments/DOC-415066A1.pdf>.

² TechFreedom has a long history of advocating for innovative uses of outer space under a light-touch regulatory regime. J. Dunstan, *Regulating Outer Space: Of Gaps, Overlaps, and Stovepipes*, THE CENTER FOR GROWTH AND OPPORTUNITY (July 10, 2023), <https://www.thecgo.org/research/regulating-outer-space-of-gaps-overlaps-and-stovepipes/>; J. Dunstan, *Regulating the Space Economy is vital for America's Continued Global Leadership*, WASHINGTON EXAMINER (July 15, 2023), <https://www.washington-examiner.com/opinion/beltway-confidential/2779518/regulating-the-space-economy-is-vital-for-americas-continued-global-leadership/>; J. Dunstan, *Bring On the Space Barons*, MEDIUM (Sept. 14, 2021), <https://medium.com/@TechFreedom/bring-on-the-space-barons-e425129fbff6>. TechFreedom is a frequent commenter in FCC and other agency proceedings related to outer space activities. See Modernizing the Commission's National Environmental Policy Act Rules, WT Docket No. 25-217 (Sept. 18, 2025), <https://techfreedom.org/wp-content/uploads/2025/09/TechFreedom-Comments-NEPA-9-18-25.pdf>; Space Innovation & ISAM, IB Docket No. 22-271 (Apr. 29, 2024), <https://techfreedom.org/wp-content/uploads/2024/04/TechFreedom-FCC-ISAM-Comments.pdf>; Mitigation of Orbital Debris, IB Docket No. 18-313 (June 27, 2024), <https://techfreedom.org/wp-content/uploads/2024/06/TechFreedom-Orbital-Debris-Refresh-Comments-6-27-24.pdf>; Revising Spectrum Sharing Rules, IB Docket No. 21-456 (Aug. 7, 2023); Single Network Future, GN Docket No. 23-65 (May 12, 2023); Expediting Initial Processing, IB Docket No. 22-411 (Mar. 3, 2023); Space Innovation, IB Docket No. 22-271 (Oct. 31, 2022); Rural Digital Opportunity Fund, WC Docket No. 19-126 (Sept. 26, 2022); Revising Spectrum Sharing Rules, IB Docket No. 21-456 (Apr. 25, 2022); Reply Comments in Modernizing and Expanding Access, WT Docket No. 20-133 (Jan. 3, 2022); OSTP National Orbital Debris Research and Development Plan (Dec. 31, 2021); Modernizing and Expanding Access, WT Docket No. 20-133 (Dec. 2, 2021); Reply Comments in Allocation of Spectrum, ET Docket No. 13-115 (Sept. 10, 2021); Reply Comments in Expanding Flexible Use of the 12.2-12.7 GHz Band, WT Docket No. 10-443 (July 7, 2021); Expanding Flexible Use of the 12.2-12.7 GHz Band, WT Docket No. 20-443 (May 7, 2021); Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service at 3, RM Docket No. 11768 (Oct. 8, 2020).

referenced draft Notice of Proposed Rulemaking (NPRM).³ In these comments, we urge the Commission to remove the issue of processing rounds, found at paragraphs 131-145, from the NPRM and issuing a follow-up Notice of Inquiry (NOI), to more fully study how to address filing windows for future satellite systems. As we discuss below, the proposed revised processing rounds may actually be diametrically opposed to the Commission’s “Build America”⁴ agenda by incentivizing the warehousing of vital spectrum resources in an age where rapid deployment of new satellites systems is not only possible, it is the driving force in securing U.S. space supremacy.

I. Introduction

TechFreedom applauds “Space Month,” the “Build America” agenda, and winning the “Space Race 2.0.”⁵ The FCC in recent years has done much to streamline the licensing processes for the deluge of new satellite applications that Cheap Access to Space (CATS)⁶ has

³ In the Matter of Space Modernization for the 21st Century, Notice of Proposed Rulemaking (draft) (“Draft Space NPRM”), rel. October 7, 2025, <https://docs.fcc.gov/public/attachments/DOC-415048A1.pdf>.

⁴ See Chairman Carr’s Build America Agenda, Fed. Commc’ns Comm’n, <https://www.fcc.gov/build-america> (last visited Oct. 17, 2025).

⁵ Brendan Carr, Chairman, Fed. Commc’ns Comm’n, Remarks on Build America, FCC Doc. No. DOC-415040A1 (Oct. 6, 2025), <https://docs.fcc.gov/public/attachments/DOC-415040A1.pdf> (“Today, the United States sits at the dawn of a new Golden Age of space innovation. And President Trump has been clear that the U.S. will dominate once again. And America’s leadership in space could not come at a better time. That is because we are now in the midst of what I refer to as a Space Race 2.0.”).

⁶ See, e.g., AIR UNIVERSITY, MAXWELL AFB, FAST SPACE: LEVERAGING ULTRA LOW-COST SPACE ACCESS FOR 21ST CENTURY CHALLENGERS 33-34 (2017), https://www.airuniversity.af.edu/Portals/10/Research/Space-Horizons/documents/Fast%20Space_Public_2017.pdf (declassified version) (under-signed counsel headed the regulatory group for this study).

fueled.⁷ But more needs to be done, and the Draft NPRM opens up for comment many critical licensing issues. The fundamental problem, however, is that the issue of whether, and how, to modify the existing processing round approach to licensing new NGSO systems is not ready to move forward to the rulemaking stage and instead should be addressed with a more general inquiry commenced with the Notice of Inquiry.

II. Issues Related to Processing Rounds Lack a Sufficient Record to Proceed to a Discussion of the Specific Rules Contemplated in the Draft NPRM

A. The Commission has Often Moved Too Quickly to an NPRM in Cases Where a Broader Discussion is Warranted

In addition to having a deep background in outer space matters, TechFreedom has toiled in the fields of administrative law since its inception in 2011. We have often commented when the FCC has engaged in a “ready-fire-aim” approach to regulatory solutions before the problem space has been properly bracketed.⁸ Whatever discretion the

⁷ Comments on Expediting Initial Processing of Satellite and Earth Station Applications & Space Innovation, IB Docket No. 22-411 & 22-271 (Feb. 6, 2024), <https://techfreedom.org/wp-content/uploads/2024/02/TechFreedom-Reply-Comments-Expediting-Initial-Processing-of-Satellite-and-Earth-Station-Applications-Space-Innovation-2-6-24.pdf>.

⁸ Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed Satellite Service Systems, IB Docket No. 21-456 (Aug. 7, 2023), <https://techfreedom.org/wp-content/uploads/2023/08/Satellite-Spectrum-Sharing-8-7-23-TechFreedom-Comments.pdf>; TechFreedom and the International Center for Law & Economics Reply Comments on Modernizing the E-rate Program for Schools and Libraries at 4 n.8 (Nov. 7, 2013), http://docs.techfreedom.org/E_Rate_Reply_Comments.pdf (“Indeed, the FCC should have issued a Notice of Inquiry before issuing this NPRM for precisely this reason—a mistake the FCC all too often makes, frequently putting the Commission in the awkward position of being on the verge of rulemaking without first properly exploring the facts on the ground. This is the worst kind of putting the cart before the horse.”); Expanding Flexible Use of the 12.2-12.7 GHz Band, WT Docket No. 20-443, at 3 (May 7, 2021), <https://techfreedom.org/wp-content/uploads/2021/05/TF-Comments-12-GHz-NPRM-4-7-21.pdf> (“The Commission Should Have Issued a Notice of Inquiry (NOI), not a Notice of Proposed Rulemaking”); Petition for Rulemaking of FUSE, LLC To Establish a New Content Vendor Diversity Report, MB Docket No. 22-209, at 5 (July 22, 2022), <https://techfreedom.org/wp-content/uploads/2022/07/TechFreedom-Comments-7-22-22.pdf> (“If

Commission enjoys under the Administrative Procedure Act⁹ to configure its rulemaking process, this pattern denies interested parties adequate opportunity to shape the FCC's proposal if the FCC jumps immediately to proposed rules. Once the NPRM is issued, the gun is loaded, and the Commission may fire at any time.¹⁰

Former FCC Chair Pai wrote about the wisdom of conducting an NOI before an NPRM:

We simply ask a lot of questions about where things stand, which is typically what we would do in a Notice of Inquiry. While I of course support soliciting comment as we begin this journey, I think the better approach here would have been to ask for input on where we intend to go. The public is better served if attention can be focused on proposed rules, and the FCC's ultimate decisions are better informed by direct, as opposed to general, public engagement.¹¹

B. Fundamental Questions Related to Processing Rounds Remain and Should be Addressed in an NOI

While the Draft NPRM does propose a specific rule related to processing rounds,¹² paragraph 131 of the Draft NPRM asks thirteen separate questions, many of which cast doubt

the Commission moves forward at all, it should begin a proceeding by issuing a broad Notice of Inquiry (NOI) rather than an NPRM"); *Congress, not FCC, should Decide Future of Internet Regulation*, TECHFREEDOM (May 15, 2014), <https://techfreedom.org/congress-not-fcc-should-decide-future-of/> ("[T]here was no need to rush today's NPRM, as Commissioners Rosenworcel and Pai noted."); *FCC Violates Basic Legal Principles in Rush to Regulate Set-Top Boxes*, TECHFREEDOM (Feb. 18, 2016), <https://techfreedom.org/fcc-violates-basic-legal-principles-in-rush-to/> ("FCC Chairman Tom Wheeler . . . insist[s] that 'this is just the beginning of a fact-finding process.' Do not believe him. If that were true, the FCC would issue a Notice of Inquiry to gather data to inform a regulatory proposal. Instead, the FCC has issued a Notice of Proposed Rulemaking. That means the FCC Chairman has already made up his mind, and that the agency is unlikely to adjust course.").

⁹ Pub. L. No. 79-404, 60 Stat. 237 (1946) (codified as amended at 5 U.S.C. § 551 et seq.).

¹⁰ See also TECHFREEDOM on *Set-Top Boxes*, *supra* note 8 ("This is simply the latest example of the FCC abusing the rulemaking process by bypassing the Notice of Inquiry . . . Every time the FCC does this, it means the gun is already loaded, and 'fact-finding' is a mere formality.").

¹¹ Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269 (Statement of Chairman Pai), https://transition.fcc.gov/ftp/Daily_Releases/Daily_Business/2012/db0928/DOC-316480A6.doc.

¹² See Draft Space NPRM at 125 (proposed new Section 100.141).

on the efficacy of the specifics proposed in new Section 100.141.¹³ Paragraph 141 asks an additional six questions which also are more appropriately asked within the context of an NOI.¹⁴

More important, the discussion in paragraphs 131-145 fails to lay the fundamental predicate: exactly what is the problem the proposed rule will solve? It also fails to consider or analyze whether the solution will introduce unintended consequences that make the cure worse than the disease.¹⁵ For example, paragraph 132 posits the problem as a structure with a lead application triggering a 30-day filing window where:

interested entities have a limited window of time to prepare and file these competing applications before the cut-off date. As a result, competing applications often lack significant technical, operational, or other fundamental system details to demonstrate a proposal for a viable system, consequently leading to extended review timelines and leaving other applicants in the same processing round unable to fully assess and plan for their own operations and coordination obligations.¹⁶

¹³ *Id.* ¶ 135 (“Does the shift from a 30-day filing window to a full calendar year provide applicants with the intended benefits of increased predictability and flexibility? Should the Commission consider an alternative or additional process to open a processing round based on a request or petition to do so? Should the application window for processing round be three or six months instead of a full calendar year to minimize the risk that less qualified applicants submit strategically upon seeing other submissions rather than because they are ready to submit on their own merits? If processing rounds are shorter, should there be multiple processing rounds in a calendar year? What other structures or methodologies would provide applicants with the best opportunity to maximize the benefits of processing rounds? Are there potential consequences or complications that may result from the proposed annual processing round framework?”).

¹⁴ *Id.* ¶ 141 (“What are the benefits and costs of each processing round approach? How does a processing round framework help or harm innovation for NGSO operators? Do processing rounds place a burden on operators who are able to launch, deploy, and operate systems quickly while simultaneously encouraging hastily submitted applications for systems that may not be viable? Does our proposed approach address these problems? Alternatively, should we instead maintain the existing processing round approach and address these issues in a separate proceeding? What other changes might we consider to improve processing rounds?”).

¹⁵ Note, for example, that paragraph 132 jumps to the “solution” of a new Section 100.141 before the problems it purports to solve are even discussed.

¹⁶ *Id.* ¶ 132.

If the problem needing a solution is that incomplete competing applications cause processing delays, slowing down grants, wouldn't the better solution be to merely widen the filing window to 60 or 90 days to give competing applicants sufficient time? Introducing a completely different system utilizing a filing window that runs for a full year will actually introduce more delay, not less. For example, under the current processing rounds, say Company A was set to file a "lead" application on January 2 that would trigger a new processing round. Competing applications would have to be filed in February, and then processing would begin. Under the proposed new Section 100.141, Company A could be ready to file on January 2 but would have to wait until December 31 to see what other applications were filed, and for processing to begin, an actual delay of 330 days over the current system.

Under the current system, there is every incentive for Company A to file as soon as possible to begin the processing round cycle. Under a new Section 100.141, there would be zero incentive, and, in fact, a huge disincentive, to file on January 2. If you knew that processing would not begin until after the December 31 window closed, why file early? Why have your application out there for others to see, to copy, or to use to against you in marketing discussions?

The only benefit this proposal seems to have is the tentative conclusion that it would ease the processing burden on staff, but even that benefit is far from clear. There is no evidence in the record, for example, that the only reason for applications being incomplete is because thirty days is not enough time to develop and file a complete and clean application. It could be equally true that Companies B, C, D, etc. might not be able to produce a letter

perfect application if given a full year.¹⁷ Indeed, if the processing burdens on FCC staff are the actual problem the FCC needs to solve, that would better be addressed by reforming (or replacing) FCC Form 312, which is woefully outdated and ill-suited for the Space Race 2.0, as we've commented on before.¹⁸

C. Combining Relaxed Deployment Milestones and an Annual Processing Window Would Invite Spectrum Warehousing

The other issue raised in the Draft NPRM over which we have grave concerns is the proposal to significantly weaken the deployment milestones for NGSO systems, ostensibly to align the FCC milestones with ITU's standards.¹⁹ The problem is that the ITU standards are woefully obsolete and encourage the filing of "paper constellations" since the ITU's "bringing-into-use" period requires the deployment of only one satellite within the first seven years after license grant, and then the deployment of only ten percent (10%) of the constellation within nine years of grant.²⁰

TechFreedom does not suggest that the discussion of milestones be pulled from the Draft NPRM. That issue is ready for full discussion, and TechFreedom will have more to say

¹⁷ And speaking of "letter perfect," while it appears that the Draft Space NPRM proposes to better define "completeness," *see* Draft Space NPRM ¶¶ 98-100, there is no guarantee that these clarifications alone will prompt applicants to file applications which require less staff processing time. If this fix alone were sufficient, then there would be no need for annual processing rounds. At most a widening of the window to 60 or 90 days coupled with stricter return of deficient applications would solve the alleged problem.

¹⁸ Mitigation of Orbital Debris Comments, *supra* note 2, at 31 ("the Space Bureau should undertake a thorough review of its Form 312 to better conform it to the rules and agency practices. The FCC has enough experience with licensing space stations, even large NGSO constellations, that Form 312 should better capture the information the Commission needs to evaluate the application.").

¹⁹ Draft Space NPRM ¶¶ 167-171.

²⁰ *Id.* ¶ 171, *citing* ITU Res-35 (REV. WRC-23); ITU Radio Regulations, Article 11, Section II, Nos. 11.44. Appendix A at § 100.147(a).

about that during the comment period in this proceeding.²¹ We bring this up in the context of the processing round discussion to say this: if the Commission proceeds with this significant relaxation of milestone requirements, *and* moves to an annual processing round system, it will be announcing open season on filing applications by companies not prepared to move expeditiously to build, manifest, launch, and operate complete NGSO systems. Knowing that they have seven years from grant to launch a *single satellite*, many companies, some wholly unqualified to apply, will surely dump an application in the hopper on December 31, hoping that in seven-plus years, they'll have the capability to launch something consistent with their license. They'll be banking on a miracle, and "Build America" will be reduced to little more than building warehouses.

III. Conclusion

Pulling the processing round proposal from the Draft NPRM will allow the Commission and interested parties to engage in a fuller discussion of ways to speed processing. It would also provide time for stakeholders to conduct and introduce economic studies that include cost/benefit analyses of different approaches to processing rounds and processing times.

Ultimately, the Draft Space NPRM calls out as a major goal increasing processing speed:

The Commission must increase the speed of application processing to ensure that space innovation is not limited by unnecessary delay, which entails more

²¹ Given, for example, that consumers demand "always on, always available" data services, and the architecture of NGSO constellations require the deployment of a substantial percentage of the constellation to provide such a service, how can the Commission square a ten percent deployment milestone as meeting a Minimum Viable Service (MVS) standard? At the least, the Commission should call for full economic studies to determine the percentage of a constellation deployment that is required to reach MVS.

quickly licensing qualified applicants and dismissing unqualified requests. In burgeoning sectors like space, progress stems from a chain of iterative innovations. This means that seemingly small delays in authorizing beneficial new services—such as a few months extra to process an application—could result in a cascading chain of delays over time. Delay in innovation today means delay in the next step, and then the next, and so on in the iterative innovation process. Over time there will be less advancement, slower economic gains, and a weaker national defense. The Commission’s licensing process should foster and support innovation and not be an additional source of delay and uncertainty.²²

An annual processing round structure appears to run counter to that goal and automatically introduces that “few months extra” into the licensing process about which the Commission is rightfully worried. A more holistic discussion of processing rounds should be held in the context of a Notice of Inquiry, and paragraphs 133-145 should be pulled from the Draft NPRM when it is voted on by the Commission at its next open meeting.

Respectfully submitted,

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²² Draft Space NPRM ¶ 9.