January 28, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: GN Docket No. 12-353: Transition from legacy transmission platforms to services based on Internet Prototol (IP)

Dear Ms. Dortch:

The Institute for Policy Innovation (IPI), a public policy research organization that closely follows developments in communications and technology policy, is pleased to submit our comments on the need for the FCC to do its part to speed the transition from PSTN to IP-based networks. We ask that the FCC reform legacy regulations that are based on assumptions about a communications marketplace that no longer exists; and we specifically urge the FCC to respond positively to a proposal of test-case migrations away from the PSTN and onto IP networks.

We have seen the future, and it is not circuit switched. The migration of communications and data services to Internet Protocol (IP) is well-known, well-understood, and non-controversial. Transition to IP results in lower costs both to providers and consumers, and provides consumers with more services and more flexibility. The communications marketplace has spoken, and it is speaking every day, and it says that the PSTN is on the way out.

Indeed, transitioning communications to IP results in classic supply-side effects: Innovators and developers find unique and unexpected ways to enhance existing services and to provide new and innovative products and services when they are given an abundant supply of communications traffic sharing the common IP protocol.

It is clear that IP networks are the future, and that IP networks are where communications infrastructure investment will naturally flow, unless discouraged by counterproductive regulatory regimes such as exist today.

Infrastructure investment is among the most critical and long-lasting factors in a growing economy. Economists recognize that it is investment, especially private sector investment, that drives economic growth and job creation. In a time where the economy is clearly struggling and all sides of the political spectrum recognize the need for investment in public infrastructure, policies that encourage investment in public infrastructure should be a priority.

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Communications infrastructure investment is better made through private risk capital rather than with taxpayer dollars. Recent political headlines have reflected the risk of having politicians and bureaucrats decide where investment should be made, and which politically connected players should be the channels of such investment. No, it is much preferred that capital investment be directed by the owners of capital, who assume the risk of the investment and thus have a raw exposure to the pain of misallocation of capital. Capitalists do the best job of investing capital because they are closest to the rewards of success and the pains of failure. Government directed investment, on the other hand, is insulated from market signals and is subject to an entirely different set of incentives, most of which lead toward politically directed misallocation of capital.

We should not expect private risk capital to continue to invest in yesterday's outdated technology. Forcing companies to maintain the current public switched telephone network (PSTN) in order to comply with out-of-date legacy regulations would be a gross misallocation of precious investment dollars that should be rather be invested in the most future oriented, growth oriented way possible. In a free-market economy, capital is responsive to market forces, and avoids misallocation because it responds to market signals. Only the blunt force of government power, expressed through regulation, seeks to force investors to ignore market signals and continue to invest in out-of-date technologies and legacy infrastructure.

Yet companies ARE today being forced to maintain yesterday's outdated technology because of outdated regulations. In this manner government serves as an agent compelling capital to be misallocated. By doing so government regulation is not mildly benign but rather actively harmful to the economy.

The future is broadband, and as others have pointed out, broadband service is a new enough product that there is no incumbent provider of broadband, and certainly there is no dominant provider of broadband. Despite this vigorous and dynamic competition, the wireline companies that comprise the PSTN remain subject to legacy, out-of-date regulations that presume a dominant incumbent carrier.

Regulations that slow or hinder the migration from PSTN to IP are thus actively harmful to the economy. So long as the FCC maintains and permits regulations that hinder the market-driven migration to IP networks, the FCC will demonstrate the truth of the observation that regulation is harmful, rather than helpful, to the economy and to consumers.

While the market itself is aggressively moving toward IP networks, federal cooperation is still necessary. The FCC must facilitate the transition from circuit switched to IP networks in every possible, including a review and elimination of legacy regulations that are not only based on a market situation that no longer exists, but that actively harm the economy by forcing misallocation of investment dollars.

Certainly the FCC should 1) commit that outdated regulations designed for the circuit switched network should not migrate to broadband, IP based networks.

The FCC should also 2) designate all IP services as inherently interstate, as everyone understands they are. An intrastate IP packet, if it ever happens, would be a statistical aberration, rather than the normal occurrence on an IP based network.

The FCC should further 3) mandate that states update their universal service (USF) and carrier of last resort (COLR) requirements to recognize that there remain very few markets where competition does not exist or where consumers do not have access to communications services without USF support. Markets with access to competitive services self-evidently no longer require the support, subsidy, and legacy network maintenance obligations contained within USF and COLR regulations.

Finally, the FCC should 4) embrace the proposal to begin testing a migration from PSTN to IP networks in a number of geographically accommodating locations. Conducting a real-world test is a perfect example of how to solve a technology problem with a technology solution. It is exactly what should be done and what would be done unless a federal regulatory agency prevents it from happening though inaction.

This has worked before. The digital TV transition was for the most part successful in accomplishing its intentions while causing as little public disruption as possible. Perhaps the only improvement that could have been made in the DTV transition process would have been to conduct a series of small test cases in advance of the larger migration—exactly what is being proposed herein.

A proposal made by the largest capital investor in the U.S. economy should be taken seriously. According to a recent study by the Progressive Policy Institute (PPI), AT&T is far and away the largest single investor in the U.S. economy, followed by another communications company, Verizon.[1] And cable companies are also investing billions in new plant, equipment and infrastructure. In fact, communications companies dominate the list of the country's most significant investors. Because these are the companies who are actively providing our country with much needed investment, their analysis of the market and their suggestions for moving forward should be taken seriously and constructively by any federal agency that shares and values the mission of promoting economic growth.

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[1] Diana G. Carew and Michael Mandel, "Investment Heroes: Who's Betting on America's Future?" Progressive Policy Institute, July 11, 2012.

To not take this step would be a negative sign to the capital markets and to the companies themselves. It borders on the absurd to require that companies like AT&T maintain two parallel networks, a forward looking one that is desired by consumers and businesses and that facilitates new products and services using the latest technology; but also an expensive legacy network that is necessary only to comply with outdated regulations. Investors and the capital markets are awaiting a sign from the FCC that it will be a facilitator, rather than a frustrator, of the migration to an all-IP communications infrastructure.

We thus urge that the FCC open a proceeding that will facilitate a number of test cases in geographically accommodating areas to demonstrate not only which technological means should be used for transitioning from PSTN to IP networks, but also which communications and customer service techniques should be used in order to make the transition as clear, easily understandable and painless for communications consumers and businesses.

The market is speaking. Consumers are cutting the cord on their legacy wireline phones and are embracing wireless and Voice over Internet Protocol (VoIP) options. The question is whether our regulators are paying attention. The proposal for geographic tests, including helping consumers migrate to new options, is an opportunity for the FCC to demonstrate that it is prepared to lead rather than lag.

Sincerely,

Tom Giovanetti

Tom Giovanetti
President

Bartlett D. Cleland
Policy Counsel