Institute For Policy Innovation
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The Honorable Kevin Martin, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Mr. Chairman:

This letter is in response to the FCC's merger review, "In The Matter of Petition of AT&T Inc. for forbearance under 47 U.S.C. sec. 160 (c) from Enforcement of Certain of the Commission's ARMIS reporting Requirements."

Essentially, in this letter IPI responds to the issue of whether ARMIS should continue at all and why, certainly, it should not apply only to a small sliver of the communications industry.

The Institute for Policy Innovation (IPI) is a free market-oriented public policy think tank with headquarters in Lewisville, Texas. IPI is recognized by the IRS as a 501(c)(3) non-profit organization. IPI has been involved for several years with in-depth evaluation of the communications marketplace. Specifically, we have worked on policy development with regard to opening, expanding, and preserving markets for video, voice, and Internet access.

We have found that wherever government—federal, state, local, or at the level of any political subdivision—has engaged in reducing, streamlining, or eliminating regulation that a discernible benefit to the marketplace has occurred.

More specifically, we find that these actions have led to an increase in capital formation, resulting in the creation of jobs; a noticeable increase in product and service development and deployment; a corresponding increase in consumer choice; and a reduction in overall consumer price.

We are additionally troubled by efforts that either immediately, or over time, serve discriminatorily to regulate one company or only part of an industry.

As we recently commented in our filing In Re: Applications of Atlantis Holdings, LLC, transferor, and Cellco Partnership d/b/a Verizon Wireless, transferee, for the consent of the transfer of control of Commission Licenses and Authorizations pursuant to sections 214 and 310 (d) of the Communications Act: "We are additionally troubled by the recent tendency to make policy through the merger review process—in other words, to

extract policy commitments from companies while they are at the mercy of a regulatory agency during a merger review. Special interest groups and supposed 'consumer' groups have become adept at using merger reviews as opportunities to further their agendas and achieve their policy goals through the unique and exceptional processes available to them during a merger review. This is policy-making under duress, and these policy concessions inevitably obtain the power of precedent, even though they were obtained without anything resembling a deliberative policy process."

Similarly, in this case the current policy applies to (and thus disadvantages) only a small part of the communications marketplace. Allowing outdated and discriminatorily applied regulations to continue, especially when the information collected may distort the facts, can lead only to a distorted marketplace that will hinder the best products and best services to be brought to consumers.

We therefore urge the Federal Communications Commission to consider ending the ARMIS reporting requirements in totality.

The Unlevel Playing Field

In the dim and distant past of telecommunications history—1990—the FCC decided to add to the financial and operating data it was already collecting "from the largest carriers" by requiring reporting on service quality and network infrastructure information from local exchange carriers subject to price cap regulations.

These reports were said to be temporary when they began; and yet, 18 years later, they are still required. The collection and reporting of this information forces costs and liability on some but not others creating separate sets of regulation for companies competing in the same marketplace.

Today the reality is that new applications and technologies make prior stovepipe definitions and regulatory approaches irrelevant and anti-consumer. Wireline communication is only a small part of the marketplace and, arguably, not even the most important part. This fact begs the question—why maintain and demand a report from only a shrinking part of the market?

Communication is no longer just voice communication. As analog technology gave way to digital, voice service has merged with all other forms of data transmission. Today, communications is the transmission and distribution of multiple forms of data (voice, text, video and more) through a variety of means.

Most providers now carry multiple data formats over all three technologies. "Telephone" companies are offering digital video, cable companies are offering voice communications, and satellite companies are offering Internet access. And whereas wireless companies also offer all three, everyone is looking to mobile access as a necessity. Indeed, today almost everyone is in the "bit business."

Convergence in communications continues to bring extensive competition between new and old firms using very different technologies. Transmission technologies may differ, but the "content" sent across them is indistinguishable. Consumers use various tech

nologies and applications for communications, and do not distinguish among them except to choose the most convenient service and best value. Federal, state and local governments must understand this fact when making policy or providing oversight. Understanding this paradigm is the key to long-term industry and technological growth.

These trends point to one policy conclusion—that the communications marketplace should be seen as a whole, not as a collection of various sub-industries defined by means of transmission or as a group of companies defined by a business model or history.

Simply put, regulatory policy should be technologically neutral. Why should one method for accessing communication be highly regulated while others are not?

Particularly from the point of view of the consumer, a policymaker's goal should be neutrality, so that technologies and companies succeed or fail in the marketplace rather than through the success or failure of their lobbying efforts. But neutrality should not be achieved by applying pervasive regulation to new technologies and forcing legacy technologies or application to languish under the weight of outdated regulation. Incumbent technologies should be deregulated. The principle should be to regulate down, not up.

The Utility of Collecting the Data

Perhaps the most troubling part of legacy regulation is how it can bias the marketplace. In this case the view of the marketplace is severely biased as the data collection applies only to a small and shrinking portion of the communications industry.

To be clear, only a subset of ILECs report data via ARMIS, even while other communications carriers do have facilities and obviously provide service to customers. So while only a handful of wireline communications companies, between 3 and 11 depending on which specific report, provide data via ARMIS reports. Extracting data from a subset (a handful of carriers) of another subset (the wireline portion) of the communications industry can result only in one of two sets of data. It can result in wholly irrelevant data that illuminates nothing because the data is representative only of a group of ten out of a thousand. Or, at best, it can provide incomplete data about a subset of industry that is used for policy making on a wider industry when that information in no way represents the broader industry.

Even if this information were to be collected broadly from the vast and rapidly changing communications industry, the fact is that the goal in collecting the information has long since been achieved.

In its original thinking, the FCC sought to monitor the quality of service being provided to the consumer and the development of infrastructure under price caps, out of concern that providers would seek to increase their profits in a world where government restricted the success a company and its owners could achieve, by decreasing its customer service and reducing its investment in its own infrastructure.

Putting aside the arrogant nature of the belief that government and regulators can judge appropriate service and reinvestment better than can professional managers and owners, evidence of deterioration of service or lack of investment has not been shown vitiating all need for these "temporary" efforts. In fact just the opposite is true, as competition has become increasingly fierce in the comparatively unregulated space of wireless and cable communications. Wireline communication companies have had to increase service and dramatically invest in infrastructure, all the while bearing the heavy burden of extraneous regulation, just to try to stay even in the competition.

The theoretical actions never became manifest: The world, and certainly the communications marketplace have moved on and yet these legacy reporting requirements have been maintained.

But frankly, there is no longer a need for this information to be collected this way concerning only a small part of the market. This is for a variety of reasons that extend beyond the fact that the requirement's original "temporary" purpose has been achieved.

The government already requires this same information to be reported. Service quality data is collected among the states, many of which also are involved in industrial policy via the imposition of price caps. And the FCC already does collect this information via other reporting vehicles. In addition, the FCC requires that all wireline companies report data the commission sees as essential for monitoring competition and technological deployment. Even here, these mandates do not apply to the communications marketplace but only to wireline companies.

Perhaps the most important is that the competitive marketplace has given rise to a free market solution. Third party reports, such as studies by JD Power, provide customer satisfaction data without the heavy hand of outdated, discriminatorily applied regulation.

The Unending Life of Regulation

There are times when regulation far outlasts its utility. In the technology and communications marketplace, regulation is doomed almost from the start as it will never keep pace with innovation.

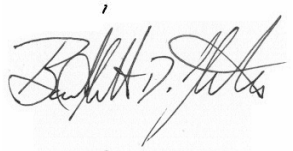
These sorts of legacy regulations, which only hinder the marketplace, and in this case provide only incomplete and certainly biased information, are exactly the sort of bad rulemaking that make fine examples for those who demand greater and greater deregulation. These sorts of regulations, like all regulations, make demands on an industry or individual companies and in this case long after the rationale is gone.

Particularly when a regulation is "advertised" as "temporary," the agency—in this case the FCC—should feel a moral obligation to consumers, to industry, and to government to remove the legacy regulation. In this case, with the reporting requirement biasing a piece of the whole, and consequently serving only to provide unusable information, the ARMIS requirements should simply be terminated.

In sum, the ARMIS reporting requirements should be ended. Such discriminatory application of government rules, drafted in the dim past of the communications industry, as a furtherance of industrial policy, must end.

Both the states and FCC itself broadly collect similar data already. In addition, the free market already provides a more consumer-friendly and accessible report. Ending regulations that have long outlasted their usefulness is as much an obligation of the regulator as is crafting regulations in the first place.

Respectfully Submitted,



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