Institute For Policy Innovation
IPI

June 20, 2011

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WT Docket No. 11-65

Dear Commissioners:

These comments are submitted in response to the FCC's, "In re Applications of AT&T Inc. & Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations," WT Docket No. 11-65.

In these comments the Institute for Policy Innovation (IPI)[1] addresses the FCC's proposed transfer of licenses but more critically reviews the review process in general and the urgent need for more spectrum, both now and in the future.

**Spectrum**

No one disagrees with the notion that more spectrum is needed, not just at some indeterminate point in the future (likely years by most estimates), whether via voluntary auctions or otherwise, but also now. The only way to guarantee that mobile broadband will continue to grow, and keep pace with innovation, is to make sure that the basic materials are available, and that is spectrum.

The fact is that we currently do not have enough spectrum allocated to handle the increase in traffic that we know will take place over the next three to four years. What happens then? Something of the reverse of Says Law: instead of supply creating its own demand essentially a lack of supply leads to higher prices and in turn to a reduction in demand. The result of dwindling demand? Less uptake of mobile communications devices and services ultimately harming many sectors of the economy and reducing the quality of life of many taxpayers as less mobile health IT, communications, cloud computing, emergency response and other critical needs are put out of reach of many.

Fortunately, some private sector efforts are underway to address this coming certainty, such as continued investment in 4G technology, including AT&Ts promise

[1] The Institute for Policy Innovation (IPI) is a 24 year old 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, including broadband. IPI does not represent clients and does not lobby, but rather seeks to inform the public and policy makers on a variety of policy issues based on empirical data and our free-market policy orientation.

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to invest $8 billion beyond the current commitment to provide a 4G network to 97% of the country. While a good start the US is at a point where every effort should be made to find a way to move more spectrum into full deployment. Allowing AT&T to acquire T-Mobile has appeal to many for exactly this reason. The combination would likely better spectrum allocation immediately and for the long term, as consumers would immediately begin reaping the benefits of greater capacity and hence improved performance.

**Process of Review**

The announcement that AT&T plans to acquire T-Mobile USA is now three months old and yet it seems that the FCC regulatory machine is sputtering, without a real timetable, and without a clear path for quality policy making. The review process is broken. Meanwhile, technology marches on.

Reviews take far too long despite measures put in place to encourage timely decisions. Decisions take well more than a year in many instances, when an innovation cycle in technology takes 18 months. Technological innovation and advance must not be slowed to the pace of government, resulting in market uncertainty, discouraged and restrained investment, and decreased economic growth. Rather, the process must be made to reflect the pace of technology, and the FCC should propose a means by which the processes can be improved to do just that.

If a FCC review of mergers must take place at all, then it should rest only on economic and technological rationales, such as spectrum concerns as described previously, allowing the merger to succeed or fail based upon those merits and do so in short order. Any challenges should be announced immediately.

A pattern of unnecessary government interference due to politics is clear in the history of other reviews, including Verizon-Alltel, Sirius-XM and most recently, the Comcast-NBCU merger. The FCC must resist the damaging effects of politically scrutinizing the merger review process in order to exploit and extract concessions from companies while they're at the mercy of those agencies. This approach has spurred on a sickening parade of political opportunists, shakedown artists and rent seekers. Worse is that the FCC creates the atmosphere for such behavior.

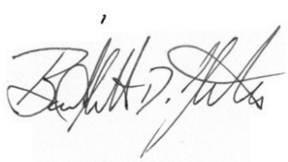
The discriminatory application of conditions that have now become commonplace during FCC merger reviews only serve to burden one competitor in a vibrant free market, lessening the advantages brought to consumers. Policy should be made through a deliberative process involving all participants in the marketplace and not through the exceptional circumstances and vulnerability of a merger review process. The FCC seems to have forgotten that its goal is not simply to craft otherwise unattainable regulations, but instead is to discern the state of actual market competition and only then, if there is none, seek rules which would serve the consumer, not necessarily competitors. The consumer interest is being subverted to the interests of industry competitors, and that must end. Moreover, as innovation continues to accelerate, arbitrary regulations immediately erode the marketplace bringing harm to consumers.

The Commission should recognize the importance of innovation in business models as well as in specific technologies. Providers should be free to try various business models, partnerships, contractual relationships and (yes) mergers in their efforts to provide products and services that consumers want and to compete both domestically and globally. The right to try, to succeed and even to fail in the marketplace is vital to the kind of dynamic economy that Americans want.

Facts, not ideologies or personalities, should lead to the conclusions at the FCC. Declining to state in several FCC reviews that competition exists in the communication's marketplace when all evidence points to rampant and growing competition makes a farce of the rulemaking process, mocking Congress and the people. In this case the problem is highlighted, a denial of competition distracts from the real problem – a lack of raw material in the form of spectrum.

IPI thanks the FCC for this opportunity to provide input, and we would be happy to participate in further deliberations of this crucial issue.

Respectfully Submitted,



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