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VIA ECFS

February 15, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: LPTV Regulatory Disabuse Highlighted in Senate Testimony

Ex Parte Presentation— GN Docket No. 12-268, MB Docket No. 15-146, MB Docket No. 16-306, MB Docket No. 03-185, AU Docket No. 14-252

Dear Ms. Dortch:

This letter is submitted on behalf of Free Access & Broadcast Telemedia, LLC ("FAB") as an ex parte presentation in the above referenced dockets.

On Wednesday, February 1, 2017 Hoover Institution Research Fellow Adam J. White testified before the full Senate Committee on Commerce, Science and Transportation regarding the tendency of Washington regulators to make life difficult for businesses, which falls disproportionately on the small firms such as community-based low power TV broadcasters.

He stressed the need for Congress to end what he called the *regulatory inequality* which small businesses face. As a case in point, Mr. White highlighted his work defending the rights of small, community-based low power television broadcasters forced at their own expense to fight in the federal court system for a simple level playing field with much larger broadcast companies.

The Senate hearing was titled "A Growth Agenda: Reducing Unnecessary Regulatory Burdens." Since the topic was not broadcasting-specific, it appears to have flown under the radar of the broadcast trade press.

Mr. White first highlighted his experiences working with a small bank, citing disadvantages it faced handling regulatory burdens that larger institutions were far better able to shoulder.

Then he stated his experience working for LPTV clients. In his written testimony, White stated:

> *"Another example I witnessed firsthand hits closer to this Committee's home. Before I joined the Hoover Institution, my law firm colleagues and I became counsel to parties challenging the FCC's orders establishing the unprecedented broadcast spectrum incentive auction, in which the FCC would conduct a reverse auction to buy back spectrum usage rights from licensees, then reorganize the available spectrum, and finally auction spectrum usage rights back to the public for new non-television uses."*
>
> *"In the Spectrum Act, which Congress legislated to authorize to the FCC to undertake an incentive auction, Congress took care to expressly protect the spectrum usage rights of low power television (LPTV) stations, which tend to broadcast for religious or ethnic communities that would otherwise go unserved by major broadcasters. Specifically, Congress provided in the Spectrum Act that '[n]othing in this subsection shall be construed to alter the spectrum usage rights of low power television stations.'"*
>
> *"But the FCC radically reinterpreted that provision to presume that LPTV stations actually have no spectrum usage rights that prevent the FCC from unilaterally taking away their licenses without compensation, even when the LPTV stations' broadcasts have not interfered with the broadcasts of other licensees; and the D.C. Circuit ultimately affirmed the FCC's interpretation of what the court held to be ambiguous statutory language."*
>
> *"That regrettable outcome—which threatens to force the shutdown of many LPTV stations, by the FCC's own admission—highlights another major disadvantage that smaller companies face in the regulatory context: when Congress legislates in broad terms, it gives regulators much more discretion to impose their own policy preferences with the added benefit of significant judicial deference. In that context, small companies are left to fend for themselves in agency proceedings, where they enjoy far fewer of the resources and tools wielded by their much larger competitors."*

The passages quoted above are taken from pages 6-7 in the enclosed testimony.

Free Access & Broadcast Telemedia LLC (FAB) is one of the LPTV clients to which Mr. White alluded in his testimony. FAB wishes to make note that it was not informed of the intended testimony prior to the hearing. Indeed, in his written submission, Mr. White stated that the opinions expressed were his own and were not attributable nor influenced by any other entity with which he has a professional relationship.

FAB Communications Director Dave Seyler later noted to the telecom trade press: "FAB was particularly pleased to see this testimony, especially since it came as a complete surprise." "We extend our heartfelt thanks to Adam for spotlighting our continuing cause on Capitol Hill. We further hope that the members of the Senate and House Commerce Committees will heed his words and instruct the FCC to honor LPTV spectrum rights as Congress originally intended."

Also below is a link to Mr. White's full testimony as recorded.

https://www.commerce.senate.gov/public/_cache/files/8c17b916-01fe-4fcf-88bc-77ae4d763b37/0135B3F67D44BF6126F571D812462C7F.adam-white---testimony---a-growth-agenda---reducing-unnecessary-regulatory-burdens-final-.pdf

Respectfully submitted,

/s/ Erwin G. Krasnow

Erwin G. Krasnow
Counsel to Free Access & Broadcast Telemedia, LLC

cc: Matthew Berry, Chief of Staff, Office of Commissioner Pai
J. David Grossman, Chief of Staff and Media Policy Advisor, Office of Commissioner Clyburn
Erin McGrath, Legal Advisor, Office of Commissioner O'Rielly

Attachment: Testimony of Adam J. White, The Hoover Institution, February 1, 2017, before the United States Senate, Committee on Commerce, Science, and Transportation at its hearing entitled: "A Growth Agenda: Reducing Unnecessary Regulatory Burdens."

"A GROWTH AGENDA: REDUCING UNNECESSARY REGULATORY BURDENS"

Testimony of
Adam J. White
The Hoover Institution[1]

Before the United States Senate,
Committee on Commerce, Science, and Transportation

FEBRUARY 1, 2017

Chairman Thune, Ranking Member Nelson, and other members of the Committee, thank you for inviting me to testify today on an issue of such immediate national importance: the modern administrative state's heavy burdens on the American people and American businesses. This has been a subject of particularly intense national debate in recent years, in a variety of forums: in Congress; in agency proceedings; on the presidential campaign trail; and even in the Supreme Court and other federal courts.

Indeed, this problem was diagnosed candidly by President Obama just six years ago, in his 2011 executive order directing agencies to reduce their existing regulatory burdens. "Our regulatory system must protect public health, welfare,

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[1] Research Fellow, the Hoover Institution; Adjunct Professor, the Antonin Scalia Law School at George Mason University; Council Member, the ABA's Section of Administrative Law and Regulatory Practice. He is of counsel to the firm of Boyden Gray & Associates PLLC in a case involving the FCC's spectrum incentive auction, as described in this testimony. The views expressed in this testimony are mine alone, and are not offered on behalf of the Hoover Institution or any other organization.

safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation," he said. To that end, agencies "must promote predictability and reduce uncertainty," and "must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends." And because "[s]ome sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping," President Obama further recognized that "[g]reater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules," and so he directed the agencies to promote "coordination, simplification, and harmonization," and to "identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation."[2]

The failures and errors of today's administrative state are not simply problems of public administration. More fundamentally, today's administrative state is a profound failure of republican self-governance under a Constitution of limited federal powers. As Chief Justice Roberts observed recently, "[t]he administrative state wields vast power and touches almost every aspect of daily life. . . . The Framers could hardly have envisioned today's vast and varied federal bureaucracy and the authority administrative agencies now hold over our economic, social, and political activities. . . . The administrative state with its reams of regulations would leave them rubbing their eyes."[3]

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[2] Exec. Order 13563 (Jan. 18, 2011).

[3] *City of Arlington, Tex. v. FCC*, 133 S. Ct. 1863, 1878 (2013) (Roberts, C.J., dissenting) (quotation marks, brackets, and citations omitted).

But however true and important such statements from the executive and judicial branches are, it is even more important for these matters to be discussed here in the First Branch—for Congress truly is the primary source of the modern administrative state. While the executive branch instills "energy" in the myriad federal agencies, and the judicial branch's deferential habits have for decades facilitated the agencies' expansive assertions of power, the legislative branch bears ultimate responsibility for empowering agencies and, when necessary, reining them back in.

As the Supreme Court once observed, "an agency literally has no power to act . . . unless and until Congress confers power upon it."[4] Congress has conferred immense power on the agencies—and over the last century it has often legislated such grants in words so capacious that the agencies have found great success securing judicial deference to regulators' unabashed reach for even greater powers well beyond Congress's original intentions. By the same token, it must fall to Congress to reform those grants of power to reflect the modern administrative, legal, economic, social, and technological reality.

I. Drain the "Moat": Modern Regulation Disproportionately Burdens Small Businesses.

Much of the cost of regulations—in billions or trillions of dollars, or in thousands of pages of regulations, or in countless man-hours dedicated to compliance with all of the regulations—is evident in myriad reports by scholars and

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[4] *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986).

policy analysts studying regulatory burdens,[5] and my fellow witnesses surely have examples from their own industries.

But before turning my focus to some of the legal and policy reforms needed to alleviate those regulatory burdens, I think it is important to stress one of the most regrettable and regressive aspects of those burdens: they fall disproportionately on small businesses, precisely the businesses on whom the nation is counting to spur a wide-reaching economic recovery.

I came to see this firsthand in my time as a practicing lawyer. Before joining the Hoover Institution, my law-firm colleagues and I were hired as co-counsel to a small community bank from Big Spring, Texas, in a federal lawsuit challenging the Consumer Financial Protection Bureau's unprecedented (and, we argued, unconstitutional) structure.[6] We saw the immense costs that our client was bearing from the CFPB's aggressive regulatory agenda, but we also saw that bigger banks found the regulatory burdens much more sustainable. In fact, the biggest banks did

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[5] Some of these studies and reports, by the George Washington University Regulatory Studies Center, Mercatus Center, Competitive Enterprise Institute, Heritage Foundation, American Action Forum, are noted in the new book that I co-authored with Oren Cass and Kevin Kosar, titled *Policy Reforms for an Accountable Administrative State*. Published by *National Affairs*, the book is freely available online at http://www.nationalaffairs.com/publications/page/regulation-policy-book.

[6] The case, still pending in the U.S. District Court for the District of Columbia, is *State National Bank of Big Spring v. Lew*. In recent months the D.C. Circuit declared the CFPB's structure unconstitutional, in another case in which we participated, *PHH Corp. v. CFPB*, 839 F.3d 1 (D.C. Cir. 2016) (petition for reh'g *en banc* pending). While Boyden Gray & Associates continues to represent the plaintiffs, I am no longer counsel to the plaintiffs in that case or in any other challenge to the CFPB.

not hesitate to *boast* that regulatory burdens were the big banks' competitive advantage. The CEO of JPMorgan Chase told analysts in 2013 that new financial regulations could serve as the "moat" that would make the industry (in the analysts' words) "more expensive and tend to make it tougher for smaller players to enter the market."[7] Goldman Sachs's CEO made the same point two years later, in 2015: "More intense regulatory and technology requirements have raised the barriers to entry higher than at any other time in modern history," he told an investor conference. "This is an expensive business to be in, if you don't have the market share in scale. Consider the numerous business exits that have been announced by our peers as they reassessed their competitive positioning and relative returns."[8]

And the facts suggest that the Jamie Dimon's and Lloyd Blankfein's predictions were well founded. As the Mercatus Center, AEI, and others have reported, the years since Dodd-Frank have witnessed significant consolidation in the banking industry, as community banks give up and merge.[9] While community

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[7] Citi Research, *JP Morgan Chase & Co. (JPM): Meeting Notes w/CEO Jamie Dimon; Reiterate Buy and $53 Target as Solid Execution Drives Double-Digit Returns in 2013* (Feb. 3, 2013), *quoted in* John Carney, "Surprise! Dodd-Frank Helps JPMorgan Chase," *CNBC* (Feb. 4, 2014), *at* http://www.cnbc.com/id/100431660; *see also* Hugh Son, "Dimon Says Banks to Gain as Crisis-Era Rules Sting Poor," *Bloomberg* (Apr. 10, 2014), *at* https://www.bloomberg.com/news/articles/2014-04-10/dimon-says-banks-to-gain-as-crisis-era-rules-sting-poor.

[8] Editorial, "Regulation Is Good for Goldman," *Wall St. Journal* (Feb. 11, 2015), *at* https://www.wsj.com/articles/regulation-is-good-for-goldman-1423700859.

[9] Hester Peirce et al., *How Are Small Banks Faring Under Dodd-Frank?*, Mercatus Working Paper No. 14-05 (Feb. 2014), *at* https://www.mercatus.org/system/files/Peirce_SmallBankSurvey_v1.pdf; Tanya D.

banks and financial regulation fall outside of this Committee's jurisdiction, the lessons that that industry has learned from Dodd-Frank should inform regulatory reform across industries.

Another example I witnessed firsthand hits closer to this Committee's home. Before I joined the Hoover Institution, my law-firm colleagues and I became counsel to parties challenging the FCC's orders establishing the unprecedented broadcast spectrum incentive auction, in which the FCC would conduct a reverse auction to buy back spectrum usage rights from licensees, then reorganize the available spectrum, and finally auction spectrum usage rights back to the public for new non-television uses.[10] In the Spectrum Act, which Congress legislated to authorize to the FCC to undertake an incentive auction, Congress took care to expressly protect the spectrum usage rights of low-power television (LPTV) stations, which tend to broadcast for religious or ethnic communities that would otherwise go unserved by major broadcasters. Specifically, Congress provided in the Spectrum Act that "[n]othing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations."[11] But the FCC radically reinterpreted that provision to presume that LPTV stations actually have *no* spectrum usage rights that prevent

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Marsh & Joseph W. Norman, AEI (May 2013), *at* http://www.aei.org/wp-content/uploads/2013/05/-the-impact-of-doddfrank-on-community-banks_164334553537.pdf;

[10] I continue to be "of counsel" to Boyden Gray & Associates, and to the clients, in their ongoing challenge to the FCC's spectrum auction orders.

[11] 47 U.S.C. § 1452(b)(5).

the FCC from unilaterally taking away their licenses without compensation, even when the LPTV stations' broadcasts have not interfered with the broadcasts of other licensees; and the D.C. Circuit ultimately affirmed the FCC's interpretation of what the court held to be ambiguous statutory language.[12] That regrettable outcome—which threatens to force the shutdown of many LPTV stations, by the FCC's own admission[13]—highlights another major disadvantage that smaller companies face in the regulatory context: when Congress legislates in broad terms, it gives regulators much more discretion to impose their own policy preferences with the added benefit of significant judicial deference. In that context, small companies are left to fend for themselves in agency proceedings, where they enjoy far fewer of the resources and tools wielded by their much larger competitors.

Thus, for all of the talk today of "economic inequality"—of structural biases that systematically benefit the richest instead of the poorest—I would urge you to keep in mind the modern problem of "*regulatory inequality*": the structural biases that systematically benefit the biggest businesses, who fare much better before federal regulators than their smaller competitors do. Because the prospects for economic recovery depend so heavily on the fate of small businesses, I urge you to keep in mind the need to focus especially on reforms to relax the significant regulatory burdens on small businesses—which requires, as I've noted here,

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[12] *Mako Communications v. FCC*, 835 F.3d 146 (D.C. Cir. 2016). Our own parallel case, *Free Access & Broadcast Telemedia, LLC v. FCC*, was dismissed on jurisdictional grounds.

[13] 27 FCC Rcd. 12357, 12528 ¶ 30 (2012).

fundamental reform of the modern administrative state. Let me now offer a few general suggestions for regulatory reform.

II. Modernize the Statutes that Empower and Limit the Agencies.

As I noted above, one of the major challenges of modern administration is the fact that Congress long ago delegated regulatory power to administrative agencies in astonishingly broad terms. And today's administrative agencies rely on those open-ended statutory authorizations to justify regulatory programs far beyond anything that the past Congresses could have expected. The FCC, for example, formulated an unprecedented assertion of regulatory power over broadband Internet service providers—the Orwellian-named "Open Internet Order," often called "net neutrality"—based on not just the decades-old Telecommunications Act of 1996 but also the *eighty*-year-old Communications Act of 1934. Using old terms of art, such as "the public interest" or "public convenience and necessity," that long ago came unmoored from their originally understood meanings and contexts, the FCC and other agencies use these vague grants of power to impose the policies of their own choosing, and judicial deference to the agencies' interpretations of these "ambiguous" statutes gives the agencies immense discretion to do so. In that context, there is little or no law constraining the agencies or anchoring the agencies to Congress's original mandates—and thus the regulated public and companies must fend for themselves in the agency process.

While the agency process itself (under the antiquated Administrative Procedure Act of 1946) desperately needs reform,[14] the most important reform will be for Congress to modernize and reform the statutes delegating power to the agencies in the first place. Only by updating old statutes to more accurately reflect Congress's intent, in light of modern economic, social, and regulatory realities, can Congress sustainably reform the costs of regulation. The point is not to end regulation, but rather (as President Obama observed in his aforementioned executive order) to "protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation," to "promote predictability and reduce uncertainty," and to "identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends." Congress should take up President Obama's own challenge to the agencies, and reform regulatory programs that are "redundant, inconsistent, or overlapping."[15] While it may fall to other parts of Congress to take the lead on reforming the Administrative Procedure Act and other parts of administrative law, it falls squarely within this Committee's jurisdiction to take the lead on reforming the statutes that empower federal agencies in the first place.

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[14] My co-authors and I propose many such reforms in *Policy Reforms for an Accountable Administrative State*, a new book published by *National Affairs*, freely available online at http://www.nationalaffairs.com/publications/page/regulation-policy-book.

[15] Exec. Order 13563 (Jan. 18, 2011).

III. Improve the Regulatory Process by Helping the Agencies to Remember the Importance of Modesty.

I am proud to serve on the leadership council of the American Bar Association's Administrative Law Section. Before last year's election, the council drafted a Report to the President-Elect of the United States, suggesting a number of important reforms for him or her to undertake in the next four years, to improve the administrative process.[16] Among those reforms, we urged the next President to require agencies to regularly conduct "retrospective review" to calculate the costs imposed by old regulations, to calculate the benefits produced by those regulations, and to compare those results to the agencies' original forecasts.

This was not an original or radical idea. President Obama called on his agencies to conduct such retrospective reviews in his Executive Order 13563, and again (for "independent" agencies) in Executive Order 13579. His OIRA Administrator, Cass Sunstein, sent the agencies a memorandum further explaining how the agencies should conduct such reviews.[17] And the vaunted Administrative Conference of the United States has also recommended that agencies undertake retrospective reviews; indeed, ACUS has reported on the significant benefits that agencies have reaped from reviewing their own past work.[18]

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[16] The report is available at http://bit.ly/2jQEqPB.

[17] Sunstein's memorandum, issued October 26, 2011, is archived at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/inforeg/implementation-of-retrospective-review-plans.pdf.

[18] *See* ACUS Recommendation 2014-5*, Retrospective Review of Agency Rules*, *at* https://www.acus.gov/research-projects/retrospective-review-agency-rules; *see also*

My fellow reformers often promote retrospective review as a tool for identifying and repealing outdated or counterproductive regulations. And while that is a benefit of retrospective review, it's not the most important benefit. Retrospective review's biggest benefit is actually *forward*-looking.[19]

That is, by forcing agencies to look back at their previous rulemakings and analyze their costs and benefits today, the Administration would force agencies and the public to confront how accurate or inaccurate the agencies' own projections were in forecasting the rules' impacts in the first place.

As scholars and policy analysts have often observed, agencies' forecasts of costs and benefits are woefully inaccurate. Former OIRA Administrator Susan Dudley colorfully described agencies' tendency "perpetuate puffery" by exaggerating rules' benefits and understating their costs.[20] She's not alone in making these claims. In testimony last year before the Senate Committee on Homeland Security and Government Reform's Subcommittee on Regulatory Affairs and Federal Management, I cited several other reports—from ACUS to the CFTC's Inspector

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ACUS Consultant Report of Joseph E. Aldy, *Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy*, *at* https://www.acus.gov/report/retrospective-review-report.

[19] The discussion that follows is adapted from my recent online essay, "Retrospective Review, for Tomorrow's Sake," published on the *Yale Journal on Regulation*'s "Notice & Comment" blog: http://yalejreg.com/nc/retrospective-review-for-tomorrows-sake-by-adam-j-white/.

[20] Susan E. Dudley, *Perpetuating Puffery: An Analysis of the Composition of OMB's Reported Benefits of Regulation*, 47 Bus. Econ. 165 (2012); Susan E. Dudley, "OMB's Reported Benefits of Regulation: Too Good to Be True?," *Regulation* (Summer 2013).

General—criticizing agencies for haphazard analysis.[21] And as Resources for the Future's scholars observed a few years ago, independent agencies' cost-benefit analyses are *especially* questionable.[22]

Whatever the reason for the underwhelming quality of agencies' own predictive analyses, retrospective review offers a useful antidote. By forcing agencies to go back and review their own work, under the public's watchful eye, agencies may learn from their past mistakes, identify their own biases and blind spots, and thus become more modest and lest prejudiced in their own predictions and policy preferences going forward. Once agencies are made to grapple seriously with the ways in which their rules' actual impacts resemble or depart from the agencies' own original predictions, those agencies should demonstrate greater "epistemic modesty" in making new predictions next time.

This is one of the major lessons to be found in *Superforecasting*, the widely acclaimed 2015 book by Philip Tetlock and Dan Gardner, following the authors' decades of close study of forecasters. Reflecting on the experience of the national intelligence agencies, Tetlock and Gardner urge that forecasters should keep score

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[21] *See* Adam J. White, "Reviewing Independent Agency Rulemaking," Written Testimony before the Senate Committee on Homeland Security and Government Affairs, Subcommittee on Regulatory Affairs and Federal Management (Sept. 8, 2016), *at* https://www.hsgac.senate.gov/hearings/reviewing-independent-agency-rulemaking.

[22] Arthur Fraas & Randall Lutter, *On the Economic Analysis of Regulations at Independent Regulatory Commissions*, RFF Discussion Paper 11-16 (Apr. 2011), *at* http://www.rff.org/files/sharepoint/WorkImages/Download/RFF-DP-11-16_final.pdf.

of their predictive successes and failures, and that they should be held meaningfully accountable—and "*meaningful* accountability requires more than getting upset when something goes awry. It requires systemic tracking of accuracy[.]"[23] At the end of their book, they tell aspiring "superforecasters" to look back at their own past errors (though without hindsight bias): "Don't try to justify or excuse your failures. Own them! Conduct unflinching postmortems: Where exactly did I go wrong? And remember that although the more common error is to learn too little from failure and overlook flaws in your basic assumptions, it is also possible to learn too much (you may have been basically on the right track but made a minor technical mistake that had big ramifications). Also don't forget to do postmortems on your successes too."[24]

This is advice that agencies need as much as anyone. Agencies are in the prediction business. The public interest depends upon the agencies becoming as accurate as possible in making those predictions. Retrospective review—institutionalized, rigorous retrospective review—is an indispensable step toward that goal. Only once agencies are forced to confront their own predictive successes and failures will they learn to be more modest in future regulatory proceedings—and only then will the regulatory process become more transparent, more honest, more open-minded, and less dominated by the unconscious (or conscious) biases of regulators.

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[23] Philip E. Tetlock & Dan Gardner, *Superforecasting* (2015), p. (emphasis in original).

[24] *Id.* at 283.

Again, while other parts of Congress may take the lead on reforming the Administrative Procedure Act, this Committee can and should reform the agencies' own substantive statutes to incorporate retrospective-review requirements. And this Committee can also use its oversight power to challenge agencies to rigorously scrutinize their own previous analyses.

IV. Eliminate Truly Unnecessary Regulatory Burdens by Modernizing the Compliance System.

Modern regulation places immense compliance burdens on American businesses. Some of those burdens are truly unavoidable: companies must take the time and effort to identify whether their operations and services comply with the law, and then they must explain themselves to federal regulators. And then federal agencies must labor to review and react to all of that material.

But much of today's compliance burden—on the regulators and regulated alike—is utterly unnecessary. Today's technology offers significant opportunities to reform and improve federal regulatory compliance, eliminating myriad redundancies and automating the submission of compliance data. The Data Coalition, a trade group, highlighted these opportunities in a December 2016 preview of forthcoming research paper on "Standard Business Reporting."[25] The Data Coalition argues that if federal agencies would reform their regulatory compliance frameworks to rely more on standardized, freely-available data (also

[25] Hudson Hollister, Data Coalition, "Standard Business Reporting: Open Data to Cut Compliance Costs" (Dec. 3, 2016), *at* https://www.datacoalition.org/standard-business-reporting-open-data-to-cut-compliance-costs/.

known as "Open Data"), then companies' regulatory compliance costs would be cut in at least two ways: "First, if government agencies standardize data fields and formats for the information they collect, rather than expressing that information as unstructured documents, businesses' software can automatically compile and report it, reducing manual labor. Second, if multiple agencies align their fields and formats with one another, by adopting universal standards for overlapping information collections, software can automatically comply with multiple reporting requirements at once, eliminating the duplicated effort of overlapping reporting requirements."

And, the Data Coalition further observed, a shift to Open Data would cut the agencies' own costs, by allowing the agencies to review, analyze, and share compliance data much more efficiently. This would help to alleviate some of the most significant burdens on the agencies' own budgets—and, thus, on Congress's budget, and on the taxpayers. The Data Coalition points to the experience of Australia, which moved to embrace "Standard Business Reporting" in recent years, and which claimed to have reduced compliance burdens on both the government and the regulated public by more than $1 billion in 2015–2016.[26]

Of course, there are limits on the extent to which regulatory compliance can be automated; compliance often requires nuanced judgments that cannot be reduced to raw data. But to the extent that compliance *does* depend on regulated people and companies submitting raw data, it is incumbent upon Congress to help promote a

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[26] *See id.*

modernized, streamlined approach to regulatory compliance that takes advantage of today's technology.

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Today's administrative agencies should use 21st century technology to administer 21st century statutes, not 1990s technology to administer 1930s statutes. Thank you for inviting me to testify today.