

26 August 2008

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 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." Essentially, in this letter IPI responds to the issue of the FCC review of the Verizon Wireless acquisition of ALLTEL.

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 with in depth evaluation of the communications marketplace for several years. Specifically we have worked on policy development with regards to opening, expanding and preserving markets for video, voice and Internet access.

We have found that where government at all levels—federal, state, local or other political subdivision—has engaged in reducing, streamlining or eliminating regulation that a discernable benefit to the marketplace has occurred. More specifically these actions 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 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.

Policy affecting the entire economy or entire industries should be set through a deliberative process, such as a regulatory rulemaking process, or through the legislative process. Policy should not be made under exceptional circumstances such as a merger review.

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We therefore urge the Federal Communications Commission to consider the merger on its merits, and to resist the temptation to apply special conditions to the merger of the organizations, regardless of the arguments by special interests.

Resist the Call to Apply Concessions and Conditions to One Actor

Today those who compete in the communications marketplace look increasingly similar.

For over 100 years “telecommunications” referred to two-way voice-grade analog wire-line service. But today the reality is that new applications and technologies make prior stovepipe definitions and regulatory approaches irrelevant and anti-consumer.

With the dominance of convergence, communications is not 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, satellite companies are offering Internet access. And while 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. For example, wireless competes with wire-line; 13 percent of consumers use wireless alone with no traditional phone service, 25 percent consider wireless their main voice communication device and mobile phones are computers offering text messaging, games, Internet access, and video, just as a laptop or personal computer do.

Consumers use various technologies 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 continued trends point to one policy conclusion – that the communications marketplace should be seen as a whole, not 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 the Internet 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, not through the success or failure of their lobbying efforts. But neutrality should not be achieved by applying pervasive regulation to new technologies. In the wholesale market, if any regulation is necessary, only a very light touch should be used. Overall, incumbent technologies should be deregulated—regulate down, not up.

And so in a case where one company is under review the temptation to layer new regulations that only impact the one company may be present, but it should be immediately rejected for the damage it would cause in the marketplace.

Discriminatory rules that are opportunistically applied are best viewed as only as harmful to the marketplace, depriving consumers of the best potential products and services.

Convergence makes old legal and regulatory distinctions irrelevant. In the digital world, the distinction between local and long-distance phone service has no meaning. Also meaningless are different regulatory regimes for cable, telephone, or satellite companies as they are all delivery of the same product. Companies that once carried one-way video now compete with companies that once carried only two-way voice traffic. This is convergence. Regulations based on invalid distinctions will fail in their purpose and do real economic harm. More damaging than are regulations which would apply to only one company out of the myriad of those competing in the same space.

Do Not Affirm a Path to Bad Policymaking

A fundamental tenant of good policy making is that of review and debate. Almost predictably rules made without critical review result in bad policy. Moreover, extremely subjective rules, such as those applied to only one entity affecting the reality of only that entity, are the worst rules to make because they most dramatically bias the marketplace towards, or away, from individual participants in the marketplace and deprive consumers of one more competitor who is able to bring the best price, products and service to bear.

In an environment such as a merger review, any rules crafted to only apply to the new entity would be rules that otherwise would not, or could not, be imposed. That is to say that only in such an environment would the free speech of critique and analysis be effectively quashed, that hearings and debate would be all but completely shunted. In this environment only the worst limitations could be set, and only the most ill considered rules layered into existing regulation.

If there is a compelling case for new regulations, then those potential government rules should be vetted through a system that allows for broader public discourse, through hearings, via comments, and in the press. In other words via a rulemaking procedure not as the extraction of regulatory rents from an otherwise functioning market.

Broadband Across America

Like most decisions made by private enterprise in a free market, the merger of Verizon Wireless and ALLTEL makes a great deal of sense. In a sentence - ALLTEL is very rural when compared with Verizon Wireless. Together, these two companies essentially create a seamless nationwide mobile network. While there will be benefits to those in more urban areas, the greatest benefits will accrue to the rural areas, given their enhanced access to a true national network. And in addition, those rural networks will now be upgraded bringing yet more benefits, including greater access to broadband to American countryside.

In this sense the merger of these two companies adds to competition by allowing the emergence of a new national broadband entity that truly has as one of its goals the delivery of quality broadband access to rural areas across the country.

This additional competition should not be taken lightly. For years various so called “public interest” groups have petitioned government at various levels in various ways to intervene in a functioning free market premised on their contention that there were not enough broadband options across the country. This merging of complimentary competitors provides a free market solution answering the complaint of these groups.

In summation, in your review of the proposed merger, you must resist any temptation to apply conditions specific to the new entity. Such discriminatory application of government rules and conditions drafted and implemented without proper reviews, input and proceedings would only serve to burden one competitor in a vibrant free market, lessening the advantages brought to consumers. The harm caused by the likely unintended consequences of discriminatory conditions and regulations placed upon any single company would outweigh any potential or assumed benefit of such regulations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Bartlett D. Cleland', written in a cursive style.

Bartlett D. Cleland
Director
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Dallas, Texas