

**TESTIMONY OF THE HONORABLE DONNA L. NELSON, CHAIRMAN,
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AT THE TEXAS FORUM ON INTERNET REGULATION**

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Introduction

Thank you very much for the opportunity to participate in this incredibly important discussion. I thank the FCC for venturing outside of DC to gather additional feedback as part of its Open Internet proceeding. In particular, I thank Commissioner Pai and his staff for leading the discussion here in the Lone Star State. Texas is a very appropriate venue for this discussion. Over the last 15 years, Texas has transitioned its communications and energy markets—markets that fundamentally drive the economic success of Texas—from regulated to competitive industries and in so doing, we have demonstrated two things: first, competitive markets work better than regulated markets, and second, regulation needs to be predictable, even handed, and limited to accomplish defined goals. We cannot lose sight of the fact that regulation is a substitution for competitive markets. Unnecessary regulation impedes competition by increasing costs, erecting barriers to entry, ultimately limiting customer choice and driving up the cost of goods and services.

The Texas Success Story

The success of communications and energy policy in this state is tied to an overarching deregulatory approach to economic development that Governor Perry and the Texas legislature have implemented over the last two decades. Millions of jobs have been created throughout Texas because of this approach. Texas experienced more job growth at all pay levels than any other state in the nation from 2000 to 2013.¹ CNBC named Texas the Top State for Economy and Infrastructure, Forbes ranked Texas Number One in Economic Climate, and Chief Executive Magazine has named Texas the Best State for Business 10 years in a row. Google, AT&T and cable are investing billions of dollars to deploy networks in cities across Texas to meet the ever-increasing customer demand for faster networks. Austin is a leading start-up hub because of this approach. Those are more than accolades, and they demonstrate a further truth: when faced with limited capital, electric and communications companies are investing their dollars in Texas because Texas has a top-down appreciation for the significance of a reasoned approach to regulation and competitive markets.

Smart regulation has been critical to achieving and sustaining these gains—when markets work well, we deregulate and make sure the hand of government stays off or remains minimal. In this way, our broadband and other technology-related efforts reflect the clear mandate for the Internet articulated by Congress in the Telecommunications Act of 1996. That statute made clear that the Internet was to remain “unfettered” from federal or state regulation. The regulatory framework that emerged thereafter—a minimalist approach administered at the federal level—kick-started an incredible amount of investment, innovation, and competition that continues to this day.

Texas’ Free Market Approach

Texas’ electric and communications industries provide great examples of how a free market approach can yield positive results for customers. In Texas we believe that customers—and not the

¹ Federal Reserve Bank of Dallas, Southwest Economy, First Quarter 2014 (2014), available at <http://www.dallasfed.org/assets/documents/research/swe/2014/swe1401d.pdf>.

government—should pick the winners and losers. As former Texas PUC and FERC Chairman Pat Wood said: “Competition on its worst day is better than regulation on its best.”

Communications

Texas has been a leader in moving the communications industry toward a competitive market. The vast majority of customers in Texas live in areas that have competitive landline service. Our legislature has worked tirelessly to deregulate that market as the video and communications markets converged to offer customers bundled services. The triple play rolled out quickly in Texas because of the foresight of our legislature to allow companies to obtain a state-wide video franchise in order to provide video services. Texas was the first state to allow state-wide video franchising. I would note that as of this past Friday, October 17, 2014, AT&T Texas, the largest telephone and long distance provider in the state, has transitioned to a fully deregulated company.

The Texas Electricity Market

Our electricity market in Texas is another perfect of example of a successful competitive market. The electricity landscape in Texas is unique in that the Electric Reliability Council of Texas, or ERCOT, is contained fully within the state of Texas. In 1999, the Texas Legislature passed Senate Bill 7, which deregulated the wholesale and retail functions within the ERCOT footprint. ERCOT serves over 85% of Texas electricity load and covers about 75% of Texas’ land mass.

The ERCOT competitive market works for Texans—retail rates are considerably lower than the last regulated rates in 2001 and lower than the average electricity rate across the U.S. Customers have the choice of hundreds of different products offered by more than one hundred different Retail Electric Providers. For the seventh year in a row, the Texas retail market was ranked number one by the Annual Baseline Assessment of Choice in Canada and the U.S. I am often asked to speak at conferences across the U.S.—and sometimes outside the U.S.—about Texas’ highly successful restructured electric market. The entrepreneurial spirit that makes Texas great has made the Texas electric market one of the most successful in the world.

The Broadband Market

As we have moved away from regulation in the telecommunications and electric industries, some are calling for increased regulation in the broadband industry. In fact, some propose to place the broadband sector into a regulatory scheme that was established to regulate utilities, Title II, a scheme that was built in a different time for a different type of service. However, broadband and IP-enabled services, like VoIP, provide great examples of market-driven success due in no small part to the hands-off nature of regulation in these segments based on policies that were set when the industry was in its infancy. The indicia of success that we see in Texas in our telecommunications and electric industries, we see with equal force in the broadband industry: a hands-off regulatory approach that results in hundreds of billions of dollars of private investment in networks and vibrant competition among different platforms: cable, DSL, fiber, mobile, and satellite on both product offerings and price. The outcome is innovative products, competitive prices and higher speed for customers. These conditions are evidence of a healthy market.

If the FCC decides to go backwards and regulate the broadband sector, a sector that is highly competitive and thriving, the FCC will be moving in the wrong direction. This fundamental policy shift will erect barriers to entry and create uncertainty in the market that will inhibit investment and growth and stifle product development, ultimately depriving customers of the innovative products they have come to expect in this vibrant industry. I would respectfully caution the FCC against regulating a competitive market. If the FCC decides to the contrary, I implore the FCC to determine, before moving forward, what problem they are trying to fix and then I would ask that they narrowly tailor new regulations to achieve those objectives.

Concluding Remarks

In Texas, our electricity and telecommunications industries are becoming increasingly competitive and providing benefits for customers. As the FCC contemplates Internet regulation, I would urge you to take guidance from the free market approach that is continuing to make Texas the leader. Thank you very much for the opportunity to participate in this incredibly important discussion.