

Written Testimony of
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Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee: My name is Elizabeth Bowles, and I am a past President and current Legislative Committee Chair of WISPA, the Wireless Internet Service Providers Association, which is the trade association for the fixed wireless industry. I am also the President of Aristotle, Inc., a fixed wireless Internet service provider, or WISP, based in Little Rock, Arkansas. I am pleased to be here today as both a spokesperson for a trade association that represents the interests of small businesses as well as the President of a small business that provides broadband service to approximately 800 residential and business subscribers in Central Arkansas, including the greater Little Rock area, as well as small, underserved Arkansas communities such as Sardis, Vilonia, and Shannon Hills.

WISPA represents the interests of more than 800 providers of fixed wireless broadband services that serve customers in every state. Our members primarily use unlicensed spectrum to provide broadband to underserved, rural, and remote areas that are not cost-effective for traditional wireline companies to serve. Our member companies operate in diverse communities like Scott, Arkansas (population 72), Stony Bridge, Ohio (population 411), and LaGrande, Oregon (population 13,074) – and hundreds of other places where service from a WISP may be the only terrestrial means to access the Internet – and we are able to offer broadband by placing transmission equipment on water tanks, granaries, towers, and whatever vertical infrastructure is

available. The vast majority of our members have created and built their networks without the benefit of any Federal subsidies. So – unlicensed spectrum and unsubsidized service to otherwise unserved communities. I guess that makes us unconventional.

Under any definition, nearly all of WISPA’s members -- including my company, Aristotle -- are small businesses, “mom and pop” ISPs started by local, community-minded entrepreneurs that saw a need for broadband in their communities. Funded by friends and families, some WISPs may have only a few hundred customers and a handful of employees who “do it all” – climbing towers, marketing, providing customer service. According to the FCC, only 17 broadband Internet access providers serve 93 percent of the population. This means that over 3,000 broadband Internet access providers – whether wireless, cable, or telephone company – serve the remaining seven percent, the seven percent that is hardest to reach. Seven percent of 300 million is 21 million people. This is not an insignificant number, and without providers like my company, these Americans would be left without adequate terrestrial broadband entirely.

WISPA believes in an open Internet under the “light touch” regulatory regime the FCC implemented in 2010. Aristotle has never throttled, nor has my company capped usage or required customers or anyone else to pay to prioritize traffic. We believe the FCC’s reclassification of broadband as a Title II service was misguided, as are many of the rules the FCC adopted in its 2015 Order, such as the Internet conduct standard and the enhanced disclosure rules. WISPA joined the lawsuit seeking to overturn the FCC’s Order because WISPA is concerned about the effects that the FCC’s decision will have on small businesses. These effects include defending against frivolous complaints and class actions, and potentially having our rates regulated.

Indeed, my company is already feeling the impact of the FCC's rules. Projects that were viable investments under the 2010 regulatory regime may no longer provide sufficient returns to justify the investment. Because of the risks and costs imposed by the Order, Aristotle is reassessing its plans to expand our service into unserved areas of rural Arkansas. Before the Order was adopted, it was our intention to triple our customer base by deployment of a redundant fixed wireless network that would cover a three-county area. However, we have pulled back on those plans, scaling back our deployment to three, smaller, communities that abut our existing network. Aristotle is uncomfortable with the risks the FCC's new rules may impose on us and concerned about the expense of complying with those rules.

Small Business Exemption

In the Open Internet Order adopted in February of 2015, the FCC temporarily exempted small broadband providers from the new "enhanced" disclosure requirements. On December 15, 2015 – the day the exemption was set to expire—the FCC extended the exemption for another year. In each case, the FCC defined a small business eligible for the extension as a broadband Internet access service provider with 100,000 or fewer connections. While the FCC's decisions provide short-term relief, the agency failed on two occasions to make the exemption permanent, despite an overwhelming record that showed the following:

First, throughout an extensive (albeit flawed) FCC process that resulted in four million written contributions from the public, the FCC received not a single comment that small ISPs were flaunting the 2010 disclosure rules or that those rules were insufficient to protect consumers. To the contrary, the record showed that small businesses would be forced to pass on the additional costs to consumers—including consumers in rural areas—who are the very people that not only would benefit most from having broadband service in the first place, are also the

least likely to be able to afford that cost. In other words, the FCC failed to consider adequately the costs that will be imposed on consumers, which in turn led to the flawed decision to impose “one size fits all” regulatory burdens on the small broadband providers that serve those consumers. In the absence of evidence of consumer harm at the hands of small ISPs, there is no basis for the FCC to impose new rules.

Second, the FCC failed to analyze properly the impact on small businesses when, as required by the Paperwork Reduction Act, it estimated the burdens its new rules would have on businesses, large and small. The FCC actually wrote:

small entities may have less of a burden, and larger entities may have more of a burden than the average compliance burden. This is because larger entities serve more customers, are more likely to serve multiple geographic regions, and are not eligible to avail themselves of the temporary exemption from the enhancements granted to smaller providers.

This statement fails to grasp some simple facts. Small ISPs do not have in-house lawyers to review and understand the new disclosure rules, administrative staff to maintain the ongoing compliance, or the means to measure packet loss. Moreover, every dollar spent on unnecessary regulatory compliance is one dollar that is not being spent on new hires, network upgrades, and expansion. It is one thing for a large broadband provider with its army of lawyers to devote time and resources to the new requirements, and quite another for a WISP in West Yellowstone, Montana, to do the same.

Third, the FCC ignored an entirely one-sided record when it granted the one-year extension of the small business exemption rather than making that exemption permanent. The record overwhelmingly supported a permanent exemption, and not a single one of the millions of consumers who wrote to the FCC in the months before the Open Internet Order was adopted wrote in to oppose a permanent exemption.

Fourth, throughout this entire process, the FCC ignored the wisdom of the Small Business Administration and the requirements of the Regulatory Flexibility Act, both of which exist to protect small businesses from burdensome regulation. The record did not support the FCC's actions, so rather than act in accordance with the record, the FCC "punted" – perhaps in the hopes that it could get a record more favorable to the positions it wants to take.

The FCC has had two opportunities to get it right. In the Open Internet Order, it could have relied on comments and letters submitted by WISPA, other trade associations, and hundreds of small broadband providers that asked the FCC to make the exemption permanent, but it did not. Later, in the follow-on proceeding, the FCC could have made the exemption permanent, but it did not – it approved only a one-year extension. If the FCC had followed the record in either instance, we would not be here today asking Congress to step in. Instead, small ISPs face the prospect of more FCC proceedings and continuing uncertainty that divert time and resources away from innovating, investing, and expanding broadband networks to meet the demand of rural and underserved Americans.

When WISPA met with the FCC prior to the enactment of the Open Internet Order, the FCC discounted WISPA's stated concerns about the uncertainty caused by a new regulatory regime and ignored WISPA's plea that small businesses be exempt from the Order. Now, as I sit here today, WISPA has members whose banks have stated point-blank that they will not make a loan until the regulatory uncertainty can be cleared. Other members have cut back or redirected investment funding in order to hire regulatory counsel. Still others have paused expansion plans waiting to see how the changing regulatory landscape will affect them. Regardless of the FCC's opinion, the reality is clear: imposing excessive and unnecessary burdens on small ISPs has dampened the very growth and investment that has made broadband service to rural America

possible. At the end of the day, it will not be the FCC or even the small businesses that pay the ultimate price for the FCC's myopic insistence on this course of action, it will be American consumers who will foot the bill – either in the form of increased costs to fund their provider's regulatory compliance burdens or – even worse – in the form of no broadband service at all because those same small ISPs must divert investment in those communities in order to meet their new regulatory burden.

Rate Regulation

WISPA also supports legislation that would prevent the FCC from regulating the rates we charge our subscribers. Under Title II, our charges must be “just and reasonable,” and any party can take us to court if they think that we are violating this standard. This is a very scary proposition for small businesses, who simply will not be able to afford to go through the process of defending frivolous complaints or participating in a lengthy judicial process to adjudicate what is “reasonable.” The FCC provided no helpful guidance on what evidence it would look to in making a determination of what constitutes “reasonable” rates. While it is somewhat comforting that the FCC does not intend to regulate rates retroactively, who is to say what a Court would do, or what a future FCC might do? And even imposing rate regulation on future activity could have a devastating effect on our ability to fund expansion or, in the worst case, even to stay in business.

In competitive markets where there is more than one broadband provider, the market will determine the reasonableness of rates. That is the essence of a free market economy, the kind that built the Internet. In markets where there may be only a single provider, there are two scenarios: the provider is subsidized by the government, or – as in our case – the barriers to entry are low enough that affordable service can be provided without government assistance. If the

broadband service offered by a WISP or other small ISP is not affordable, or if our customer service is sub-optimal, then we would not stay in business.

Eliminating the prospect of rate regulation will, especially for small ISPs, remove a significant component of regulatory uncertainty, and will help to re-open the door to more extensive innovation and deployment. The “virtuous cycle” exists only if there are broadband providers in it.

Conclusion

In seeking to regulate in the absence of legislation, the FCC lost its way. Congress can right these wrongs by making the small business exemption permanent and by banning broadband rate regulation.