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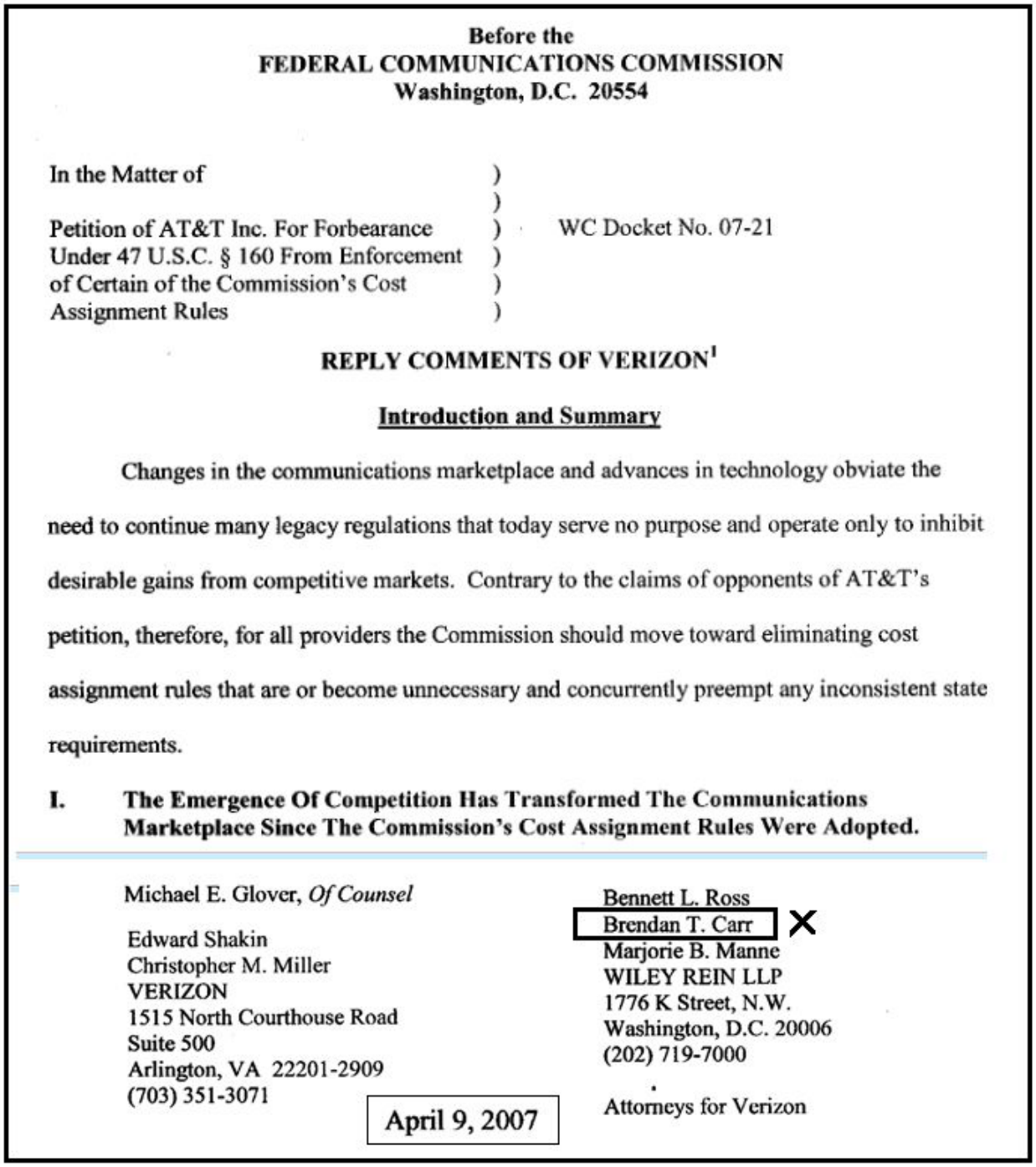
Regulatory Capture of the FCC: Stacking the Deck with the New Proposed Republican Commissioner

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Like some contrived, rigged Russian voting block, the new proposed Republican Commissioner, Brendan Carr, has been selected to make sure that the current direction set by Republican Chairman Ajit Pai and Commissioner Michael O'Reilly will always end up in a vote that almost always benefits the phone and cable companies over the public interest.

In January 2017, Brendan Carr became the FCC's General Counsel, but for the previous years, (2014-2016), he served as a legal advisor to Chairman Ajit Pai, (starting when Pai was just a commissioner). However, from 2005-2012 Carr worked at the law firm Wiley Rein where his clients were Verizon, among the other phone and wireless companies and their associations.

Here is an excerpt of one of the documents filed by Verizon in 2007, identifying Carr as part of the legal team. The goal of this filing was to start the process to remove all of the accounting rules and obligations on Verizon et al. And it worked. I'll get back to this filing in a moment.



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of AT&T Inc. For Forbearance	)	WC Docket No. 07-21
Under 47 U.S.C. § 160 From Enforcement	)	
of Certain of the Commission's Cost	)	
Assignment Rules	)	

REPLY COMMENTS OF VERIZON[1]

Introduction and Summary

Changes in the communications marketplace and advances in technology obviate the need to continue many legacy regulations that today serve no purpose and operate only to inhibit desirable gains from competitive markets. Contrary to the claims of opponents of AT&T's petition, therefore, for all providers the Commission should move toward eliminating cost assignment rules that are or become unnecessary and concurrently preempt any inconsistent state requirements.

I. The Emergence Of Competition Has Transformed The Communications Marketplace Since The Commission's Cost Assignment Rules Were Adopted.

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I note that before the FCC, Ajit Pai also spent time as a Verizon staff attorney.

Ironically, this Republican FCC wants a federal takeover to preempt all states' and city rights to 'shut off the copper' or even preempt local zoning laws for wireless deployment. Why wasn't a Republican who cares about states' rights, smaller federal governmental controls and actual wireline and wireless competition selected?

The FCC Plan: Rig the Current Voting Process for the Phone & Cable Companies.

Since January, 2017, the FCC has functioned with only three FCC commissioners, (out of five), and the Republican Chairman Ajit Pai, with Commissioner O'Reilly, have been able to control the agenda against the lone Democrat, Mignon Clyburn.

Here is just a partial list of current proposed and already decided FCC goals:

- Shut down Net Neutrality (and remove Title II)
- Shut off the copper utility networks (and not upgrade America).
- Remove all regulations and obligations to offer service.
- Erase the accounting rules.
- Get rid of most privacy rules.
- Kill off competition and deregulate Business Data Services.
- Lie about 5G wireless services, over and over.
- Preempt state law of anything that gets in the way of the above.

This path of destruction, which we documented, is based on negligence, a lack of oversight and using atrociously bad data and analysis that would make even a 2nd grader cringe. Even the history of broadband in America has been manipulated by FCC Chairman Pai, which is being used to get rid of Net Neutrality and block competition. (Pai, for example, never mentions TeleKansas, the failed fiber optic plan from the 1990's for his home state, Kansas.)

But, when we started digging, we found that Brendan Carr was not only tied to Pai as legal advisor since 2014, but prior to this, his work at Wiley Rein included clients AT&T, Verizon, Centurylink, CTIA, (the wireless association), and USTA, (the phone association), and, as we will discuss, much of the above list are items Carr worked on as part of his client's wishes, not to mention working on these issues later with Pai.

The Gang of 3: More Commissioners Don't Matter

The FCC requires a full complement of five commissioners, which is supposed to add some balance. But at this point, adding Carr, and one more Democrat, (proposed former Commissioner Jessica Rosenworcel), means that every vote goes to the Republican Gang of

3—and it is clear, based on what has been coming out of the FCC, that this is nothing more than a working group for the phone, wireless and cable companies.

I had no idea the depths of this plan until I started piecing together what has just happened.

Erase the Accounting Rules—Featuring Verizon and Brendan Carr

Some of the first proceedings in 2017 under Chairman Pai have been targeted to remove the remaining cost accounting rules. As we highlighted, these rules have become so distorted that they now charge the majority of all expenses to the local phone customers. They have been responsible for raising rates billions of dollars, have harmed broadband deployment, especially in rural areas, (as the construction budgets have been diverted to build out other lines of business, including Verizon Wireless, instead of upgrading and maintaining municipalities) and this has harmed the economic growth of cities throughout the US.

And, as the opening excerpt from the 2007 Verizon filing shows, Verizon filed to remove these accounting rules, as did AT&T and CenturyLink. Over the decade some of these regulations have been 'forebeared', meaning they are still on the books but not enforceable. And Wiley Rein, with Brendan Carr, worked for Verizon.

In fact, we were wondering why the new FCC was dealing with these rules as one of its first series of actions?

Getting rid of the cost accounting rules hides all of the massive financial cross-subsidies that we uncovered, where the majority of expenses have been allocated to local service, making it look unprofitable, while helping to fund the companies' other lines of business. Erasing these laws erases the audit trail. Moreover, as we pointed out, the FCC froze these cost allocations rules in 2001 to reflect the year 2000. Worse, there has never been any audits or examination of these rules for 16 years—and the Soviet-style voting block, instead of investigating the damage these mal-formed rules have done, is simply making sure that these obscure, inside baseball regulations are never examined or questioned.

And we filed multiple times in some of these current, obscure proceedings.

- **On May 24th, 2017** the IRREGULATORS filed comments with the FCC and the Federal-State Joint Board on Jurisdictional Separations
- **On May 15th, 2017** the FCC denied our call for audits of the FCC's accounting rules and granted

itself an extension, even though the FCC froze the way expenses were assigned to the different lines of business — but always having 'local service' pay the majority of costs.

- **On April 17th, 2017,** the IRREGULATORS filed comments with the FCC calling for the Agency to do audits and investigations of the FCC's "Big Freeze". This is important because it documents that the FCC can not create new public policies without accurate financial data.

At the end of the day, the FCC has already voted to no longer require the Uniform System of Accounting, USOA, and the next step is to finish the job over the rest of the year. The only recourse is to take the FCC to court.

Preempting Municipalities and States Rights: Pole Attachments

The Pai FCC has also put out new proposed regulations about pole attachments, to essentially preempt all state and municipality controls over utility poles claiming it will help the deployment of 5G wireless. This is, of course, ridiculous since 5G doesn't yet exist and requires fiber optic wires to the wireless antenna. And if and when it does show up, it has a short range of 1-2 city blocks. And no company is planning on rolling out lots of fiber in rural or even suburban areas that has not already been deployed.

And, let us be clear; the wireless antennas and the wires are all attached to actual utility poles. And Verizon claims that they are 'critically important'.

According to Law 360, quoting Verizon:

> *"The issue of pole attachment is critically important for broadband deployment.*

> *"With 4G densification and 5G — each of which relies on a dense network of small antennae — the pole attachment process becomes all the more important…As we roll out next generation wireless technology, we need practices and processes that will increase the speed and efficiency for getting new broadband facilities out in the field."*

Issues about utility poles have been around for decades. In 2012 there was a court case about 'pole attachments', (way too obscure to discuss here); the outcome was to make sure that the pricing of the use of the poles in municipalities benefited the phone companies.

And we find that Brendan Carr worked for most of the major phone and wireless companies

on this topic including AT&T, Verizon, and Centurylink (also known as the "Incumbent Local Exchange Companies", "ILECs") and their association, USTA. (The ILECs are the companies that control the wires (and poles) for telecommunications through the state utilities, including Verizon NY and AT&T California.)

ON PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION

BRIEF FOR ILEC INTERVENORS

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Fast forward, and in 2017, this current FCC has decided to 'finish the job' and help the phone companies by 'streamlining' pole attachment requirements and to remove/preempt basic municipality rights in multiple proceedings. Yet, this current FCC has made no demands to get any 'commitments' for build outs or to investigate the cross-subsidies of the wireless networks which have been able to charge the state wired utility for much of the construction and other expenses—based on the FCC's own mal-formed accounting rules.

How to Capture the FCC: Stacking the Deck Cronyism

Thus, it appears that Carr has been working with Pai to put all of these attacks on the public interest in motion long before January, 2017. Making Carr the new commissioner would be tantamount to a rigged vote, where the other side never has a chance, and there will be no serious debate.

What we have now, then, is "card-stacking propaganda", and "cronyism". Here are the definitions from Reference.com and Wikipedia.

- **"'**Card-stacking propaganda' deliberately misrepresents something to manipulate the audience. Rather than relying solely on facts, card-stacking propaganda will exaggerate or downplay something to suit a specific goal."
- **"'**Cronyism'-exists when the appointer and the beneficiary such as an appointee are in social or business contact. Often, the appointer needs support in his or her own proposal, job or position of authority, and for this reason the appointer appoints individuals who will not try to weaken his or her proposals, vote against issues, or express views contrary to those of the appointer."

Brendan Carr will not rock the boat. He will not add a new voice to this discussion; hell, he won't even defend basic Republican principles like states' rights or competition. He won't stop America from being taxed, fee-ed and surcharged to death and will just help to strengthen the monopoly/duopoly control of his former clients—Verizon, AT&T, the CTIA (wireless association) and the USTA, (the phone lobby/association).

He is just wallpaper for what former Verizon attorney and current FCC Chairman Ajit Pai has put forward—and we are being played. The list of proceedings has been the FCC's 'hit list' since Pai took office' and we now know Carr helped design it and their perspective was never the public benefit.

In fact, as we discussed, the FCC's agenda now mimics AT&T's IP Petition and agenda that

was handed to Pai in 2012. It is also the model for state legislation that was created by ALEC, the American Legislative Exchange Council, but created and funded by the ALEC member phone and cable companies, AT&T, Verizon et al., in multiple ways.

Where are the Real Republicans Who Want Competition and States' Rights Over Building a Federal Government Takeover?

How perverse is all this? This Republican FCC wants a federal takeover to 'shut off the copper' and preempt all states' rights. Why wasn't a Republican who cares about states' rights, smaller federal governmental controls and actual competition selected? The sucking sound of the DC Bell Jar shows the power of AT&T et al. to control the agenda.

And yes, there are other Republicans that care about competition. They exist, such as Chip Pickering, who was a Congressman from Mississippi, and who is the CEO of Incompas, the association of actual competitors. There is also a previous CEO (then named Comptel), Earl Comstock, Esq, who worked in the US Senate Commerce Committee as well as worked in Congress as special counsel shaping the Telecommunications Act of 1996.

And there are a host of other hard-working Republican lawyers and entrepreneurs who actually worked at independent competitive carriers and not an ILEC or wireless company like AT&T, Verizon, or their lobbying group/associations?

Wouldn't it be refreshing to have someone who actually helped to shape the Act that brought competition to America – shut up Ajit Pai, who has no idea what he's talking about when he talks about the "Clinton light touch" in regulation, (as Ars Technica pointed out). The Clinton-Gore position was to "OPEN" the local phone networks to direct competition so that customers could choose their own ISP, phone or even cable service provider. Pai would be sliced-n-diced if a real Republican, who actually cares about competition and knows the facts, was brought in as the 3rd Republican commissioner; not this faux-fact-assemblage that has hijacked the facts for 'card-stacking propaganda'.

No. This current FCC is being designed to make it easier for AT&T, Verizon et al. to buy more companies and merge so that they can control, not only the wires, but wireless, and move more into the media and ad-tech world. Getting rid of privacy issues or Net Neutrality means – they control the wires and what goes over them and how they are used to optimize profits.

Conflicts of Interest? The FCC Commissioners should NOT be chosen because they

worked for the companies they regulate.

There are some who have noticed. Re/code writes about Brendan Carr:

> *"Before arriving at the FCC as an attorney in 2012, he worked as a lawyer at the D.C. law firm Wiley Rein and represented telecom companies like AT&T, Verizon and two of their main trade associations, USTelecom and the wireless-focused lobbying group, CTIA. Similar ties to the telecom industry previously haunted Pai, who represented Verizon at a D.C. law firm before he joined the commission. (Note: Actually he worked for Verizon, as well, as an attorney.)"*

Benton points out that when Carr became a legal advisor for then-Commissioner Ajit Pai in 2014, Commissioner Pai said:

> *"Brendan Carr …litigated First Amendment and other telecom cases while in private practice. He combines this experience with a keen instinct for telecom policy, which I will rely on as the Commission tackles many important issues."*

First Amendment Issues for the Wireless Industry, Not San Francisco.

As far as we can tell, this is the 'First Amendment' case being hinted at, and unfortunately, this victory is for the wireless industry association, the CTIA, and the First Amendment was used against the city of San Francisco. And Carr was one of the lawyers for CTIA.

"Wiley Rein Secures First Amendment Victory for the Wireless Industry

October 28, 2011

> *"Wiley Rein, which has represented CTIA-The Wireless Association® (CTIA) in this matter since 2010, had argued on the industry's behalf.*

> *"John Walls, Vice President, Public Affairs at CTIA, said of the ruling, "Today the federal district court in the Northern District of California held that the requirements of San Francisco's cell phone warning regime, as currently drafted, violate the First Amendment. The court properly determined that the City cannot constitutionally require retailers to hang posters in their stores or paste stickers on cell phone display materials in order to convey the City's selective messages about cell phone safety and cell phone use. The court also found that the 'fact sheet' created by the City was both misleading and alarmist and*

> *that the City could not require retailers to distribute this 'fact sheet' without significant changes."*

> *"Wiley Rein's Andrew McBride, Josh Turner, Megan Brown and **Brendan Carr** are among the counsel for CTIA in this matter."*

Defending the industry against the wishes of a city is going to come up again and again as the FCC is planning on 'preempting' state and city zoning and laws. And for Chairman Pai to quote this First Amendment case, in this context, as a selling point of Brendan Carr, shows he's telling the industry that it is in good hands.

The First Amendment, Constitution of United States of America 1789 (rev. 1992)

> *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press."*

Conclusion

I am not a Republican (nor a Democrat anymore), but we need a Republican that is going to stand up for Republican values of 'less government', states' rights and competition because it was a Republican-based Congress in 1996, under President Bill Clinton, that voted to bring the Telecom Act into existence, to open the monopoly "ILEC" phone networks so that customers could choose their own ISP, cable, phone broadband providers.

In short, Brendan Carr should not be appointed and some Republican who will work for the public and wants a free market and competition, and doesn't believe in government corporate financial assistance, should be made commissioner instead.