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Economic Liberty Task Force
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Comments of Avvo, Inc. on Effects of Occupational Licensure on Competition, Consumers, and the Workforce

Avvo, Inc. welcomes the opportunity to comment in advance of the FTC’s Roundtable on Occupational Licensing, and supports the FTC’s focus on occupational licensing reform and enhancing consumer choice in the markets for professional services.

Avvo is the largest online legal resource for U.S. consumers, featuring ratings and profiles for nearly every lawyer in the country along with legal guides, self-help material, and a robust question-and-answer forum where consumers can ask questions anonymously and get answers from lawyers. Avvo’s website is visited by over 8 million people every month, and the company employs over 300 people at its Seattle, WA headquarters.

Avvo believes that the public benefits from having access to lawyers, and that sensible licensing restrictions can help protect consumers when buying legal services. However, in preserving a broad monopoly on the provision of “the practice of law,” and by micromanaging how lawyers can interact with the public and providers of innovative new service offerings, legal regulators are driving up costs and driving down access to justice.

1) The Monopoly and Breadth of Legal Services Regulation

Every state restricts the ability to engage in “the practice of law” to lawyers licensed in that state.¹ While some minor exceptions have popped up over the years, for the most part there is a vast monopoly in anything “legal” – including advice on routine matters such as filling out government forms – that the lawyers have claimed.

¹ There are two stages to the restriction: outside of some edge cases (like apprenticeship programs in CA & WA, or CA’s acceptance of a wider range of law schools), graduation from an ABA-accredited law school is a condition of admission to the Bar. The second stage is, of course, passing a state-specific Bar exam. And such licenses are far from portable; similar testing requirements await any admitted lawyer who seeks to move to another state.

What's more, those admitted to the legal monopoly are then further constrained by their regulators in how they can interact with the public. A handful of narrow consumer protection concerns have over the years metastasized into overarching licensing rules. This regulation stifles the flow of information about legal services and hampers lawyers from innovating in the delivery of legal services. State Bar regulations – and interpretations of those rules by committees made up of market participants, often meeting in private with little to no outside input – significantly limit how attorneys can advertise and sell their services. And such limitations are not informed by any consumer perspective on preferences in buying legal services, or any evidence that such restrictions are necessary to prevent harm.

2) The Legal Monopoly and Its Rules are Compromising Access to Justice.

This legal monopoly and overregulation operates against a backdrop of a widely-acknowledged problem: the inability of Americans to get access to legal services. For even though over half of American households face multiple legal problems annually, consumers ignore these issues at rates alarmingly higher than their counterparts in countries like the United Kingdom and the Netherlands, which have fewer restrictions on the offering of legal services.²

By limiting the size of the market for providers, and then further tying the hands of those providers in marketing and delivering those services, legal regulators have driven prices higher and impeded innovation and choice in the delivery of legal services. This, in turn, has helped exacerbate the “access to justice” crisis in America. In the last ten years, virtually every state’s Supreme Court has appointed a commission to study, and make recommendations to address, this problem. Utah’s findings are representative; in 2015 the Utah State Bar Futures Commission recognized the vast problems facing Utahans – particularly those with low incomes – when trying to obtain legal help. As the Commission’s report noted, over 95% of defendants in Utah debt collection and eviction cases appear *pro se*. In divorce matters, only 12% of cases have attorneys on both sides. And as the Utah Futures Report noted, “the number of people trying to represent themselves in the Utah courts is not only large, it is steadily increasing.”³

Yet instead of taking a hard look at the core problem of overreaching regulation, the Utah report – as with the vast majority of such state commissions – proposed measures such as more pro bono service and tweaks to court procedure. At the same time, as discussed below, Utah is among those states that are working to make it harder for lawyers to experiment with innovations in the delivery of legal services.⁴

² Gillian K. Hadfield & Jamie Heine, Life in the Law—Thick World: The Legal Resource Landscape for Ordinary Americans, in *Beyond Elite Law: Access To Civil Justice For Americans Of Average Means*, S. Estreicher and J. Radice (eds.) (2015).

³ Report and Recommendations on the Future of Legal Services in Utah, www.utahbar.org (2017), https://www.utahbar.org/wp-content/uploads/2015/07/2015_Futures_Report_revised.pdf

⁴ To date, Oregon is the only state whose “Future of Law” or “Access to Justice” commission recognized that the Bar’s detailed, rigid rules may be adversely impacting access to legal services <http://www.osbar.org/docs/resources/2017FuturesTFSummary/offline/download.pdf>

3) Legal Licensing Restrictions are Driving Higher Prices for Legal Services

While the practice of law has been subject to less economic scrutiny than other licensed professions, recent data indicates that licensing restrictions drive a significant wage premium and concomitant increase in the cost of legal services.⁵ Further exacerbating this impact is the deep involvement of lawyers at all levels of regulatory policymaking, resulting in government policies that drive yet more demand for the services available only from the limited monopoly of lawyers.⁶ It is estimated that the factors identified above combine to drive to lawyers an overall wage premium exceeding \$10 billion annually.⁷

The high cost of legal services obviously contributes to the access to justice gap. While the United States ranks highly in the World Justice Project “Rule of Law Index” (placing 18th out of 113 countries overall), the U.S. is in 94th place on the Index’s civil justice sub-factor measuring whether “people can access and afford civil justice.”⁸ Thus, citizens of 93 countries – including such benighted locales as Venezuela, Myanmar, and Russia – have greater access to civil remedies and affordable legal representation than do their counterparts here in the United States.

And ironically, higher prices and a depressed market for legal services also harms many of those within the legal monopoly. The distribution of lawyer incomes is quite wide,⁹ and consumer-facing lawyers – those who would benefit most from broader access to legal services – suffer from wide-spread underemployment.¹⁰ By limiting consumer choice, the profession may be concentrating the fruits of the monopoly in fewer and fewer hands, while simultaneously depressing demand.

4) Legal Over-Regulation is Hampering Innovation

Consumers today have, in almost every area, unparalleled levels of choice. They can pick from multiple options, with a high degree of transparency, at every price level. Yet this does not hold when buying legal services. Lawyers continue to largely operate on a single model of “full scope” representation: hand your legal issue to the lawyer, and the lawyer will handle it, and present you with a bill for the time it took to do the work. Consumers, accustomed to a variety of cost-vs-quality tradeoffs in everything else they buy, find themselves with a stark choice when shopping for legal services: expensive custom work, or doing it themselves.

The regulatory forces at work also elbow out innovators who want to help lawyers bring their quality services to a wider market. In the last two years, Avvo launched Avvo Legal Services – a marketplace of fixed-price legal services provided by participating local attorneys. Avvo creates the offers, which attorneys agree to honor. Avvo transparently informs consumers what services will (and will not) be performed, provides an easy payment mechanism via credit or debit card,

⁵ Winston, Clifford, et al. *First Thing We Do, Let's Deregulate All the Lawyers*. Brookings Institution Press, 2011.

⁶ *Id* at pp 59-72.

⁷ *Id* at p 74.

⁸ 2016 Data, World Justice Project, <http://data.worldjusticeproject.org/> WJP Rule of Law Index: Rankings for Four Sub-Factors (2017), <http://notjustforlawyers.com/wjp-rule-of-law-index-rankings/>.

⁹ Salary Distribution Data, National Association for Law Placement, <http://www.nalp.org/salarydistrib>

¹⁰ According the [2017 Clio Legal Trends Report](#), solo and small firm lawyers on average only bill 2.3 hours per day.

and offers a satisfaction guarantee. Most of these services are simple legal consultations, such as a 15 minute telephone consultation (\$39), or a contract review and 30 minute telephone consultation (\$149). And despite carefully building this product to comply with the consumer- and client-protective goals of the Rules of Professional Conduct, Avvo has run into a veritable buzzsaw of opposition from legal regulators and legal trade associations.¹¹

This opposition is not grounded in evidence, nor informed by any recognition of the constitutional and antitrust constraints under which legal regulators operate. It is simply a kneejerk reaction, a mechanical and conservative application of rigid Bar rules. While Avvo continues to offer its legal services marketplace – and continues to advocate with state regulators, encouraging them to take a more enlightened approach – our experience to date is illustrative of the burdens that the legal licensing regime places on access, price, and innovation in legal services.

Conclusion

The law, given its long history and central role in policymaking, has escaped much of the occupational licensing scrutiny directed at other professions. That oversight should be corrected. The sheer size of the legal monopoly's impact on access to justice – to say nothing of its drag on the American economy – militates for rethinking the parameters and regulation of that monopoly.

We thank the FTC for providing the opportunity for Avvo to comment. I will be attending the Roundtable on November 7 – please don't hesitate to reach out if there are questions or if we can be helpful to this effort in any way. Best,

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¹¹ See [New York State Bar Association Ethics Committee Opinion 1132](#) (2017); [New Jersey Advisory Ethics Opinion](#) (2017); [Utah Advisory Ethics Committee Opinion No. 17-05](#) (2017); [Virginia State Bar Legal Ethics Opinion 1885](#) (proposed) (2017); [Supreme Court of Ohio Board of Professional Conduct Opinion 2016-3](#) (2016); [Pennsylvania Bar Association Legal Ethics and Professional Responsibility Committee Formal Opinion 2016-200](#) (2016); [South Carolina Bar Ethics Advisory Opinion 16-66](#) (2016); [Maryland State Bar Ethics Committee Docket No. 2016-14](#) (2016).