

In the Matter of)
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Modernizing the FCC Form 477 Data Program) WC Docket No. 11-10

³ *Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 16-143, GN Docket No. 13-5, WC Docket No. 05-25, RM-10593, Report and Order, FCC 17-43, ¶¶ 13, 15 (2017) (“*BDS Order*”).

performance testing, analogous to the Measuring Broadband America program for fixed broadband.

I. COMMENTERS DO NOT PROVIDE PERSUASIVE RATIONALE FOR DOING AWAY WITH REPORTING ON COMMITTED INFORMATION RATES FOR BUSINESS/ENTERPRISE/GOVERNMENT SERVICES.

Most commenters do little more than parrot the Commission’s contention in the FNPRM that “the added CIR data for business/enterprise/government services do not appear to provide additional useful insight.”⁴ However, as Windstream notes in its comments, Form 477’s inquiries on business/enterprise/government services yield the best—and currently the only—data collected by the Commission that can shed light on whether its predictions about increased business data services competition over the medium term will prove accurate, or whether different action is necessary to ensure competitive business data services markets.⁵ Thus, contrary to the Commission’s conclusory assertion, these data do provide useful insight and would offer even more if Form 477 is expanded as proposed by Windstream and INCOMPAS.⁶

The American Cable Association argues that the collection of information on business/enterprise/government services is unnecessary because its members “are finding that particularly small- and medium-sized end-users increasingly do not distinguish between these types of offerings as broadband service performance for best-efforts is enhanced,” and ACA cites

⁴ *FNPRM* at ¶ 31, *cited in* Comments of AT&T, WC Docket No. 11-10, at 10 (October 10, 2017); Comments of NCTA – The Internet and Television Association, WC Docket No. 11-10, at 13 (October 10, 2017); Comments of Alaska Communications, WC Docket No. 11-10, at 2 (October 10, 2017); Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket No. 11-10, at 2-3 (October 10, 2017); Comments of Verizon, WC Docket No. 11-10, at 7 (October 10, 2017); Comments of Comcast Corporation, WC Docket No. 11-10, at 17 (October 10, 2017).

⁵ Windstream Comments at 2.

⁶ Comments of INCOMPAS, WC Docket No. 11-10, at 2 (October 10, 2017).

the *Business Data Services Order* as support for this conclusion.⁷ However, ACA conveniently omits that the Commission in the same paragraph stated that it “[did] not observe broad substitution or substantial performance similarities with fiber-based business data services” sufficient to determine that best-efforts services and dedicated services are in the same product market. In light of that conclusion by the Commission, the separate collection of information of business/enterprise/government services is essential to capture an accurate picture of trends in competition in the business data services markets. Likewise, ACA’s contention that no meaningful rationale underlay the 2013 expansion of Form 477 to include information on CIRs for business services is not persuasive.⁸ In fact, the Commission in 2013 made clear that its objective was “to better estimate the level of competition in a market and the number of providers that compete for a particular class of customers;”⁹ moreover, whether the Commission made its case in 2013 is irrelevant given the compelling need that currently exists for collecting these data following the 2017 *Business Data Services Order*.

Furthermore, commenters do not provide evidence that the collection of CIRs for business/enterprise/government service presents a meaningful burden on providers. Alaska Communications asserts that this collection requires it to “conduct a manual review of each business contract to determine if the contract calls for a “best efforts” level of service, or provides a service-level agreement.”¹⁰ However, if Alaska Communications’ systems require such a manual review, the company would have to undertake such a review anyway to report on

⁷ Comments of the American Cable Association, WC Docket No. 11-10, at 14 (October 10, 2017).

⁸ See ACA Comments at 13.

⁹ *Modernizing the FCC Form 477 Program*, Report and Order, WC Docket No. 11-10, FCC 13-87, at ¶ 24 (2013).

¹⁰ Alaska Communications Comments at 2.

whether business service is provided at all in a given census block, as the Commission proposes to maintain the separate indicators for mass market and business services.¹¹ USTelecom and Sacred Wind apparently argue that this data collection is burdensome because providers offer only best-efforts services to both consumers and businesses in many areas.¹² To the extent that providers offer only best-efforts services, this data collection creates no burden because providers would continue to report the contractual or guaranteed data throughput rates as “zero.”¹³ The fact that providers offer only best-efforts services in some areas is not a reason to forego collecting information on dedicated services at all; on the contrary, as AT&T admits in supporting the retention of separate indicators for consumer and business deployment, “these distinctions [are] useful from a market analysis perspective.”¹⁴ Detail on the numbers of connections at various CIRs in a given census block would make these data even more useful from a market analysis perspective. Finally, USTelecom argues that it “may be more accurate to simply report whether a provider offers BDS” because providers may be reporting data on CIRs incorrectly.¹⁵ As Windstream notes in its comments, a lack of clarity in the existing data collection is a reason for the Commission to offer better guidance, not to throw up its hands and abandon the collection of these important data.

¹¹ See *FNPRM* at ¶ 31.

¹² See Comments of Sacred Wind Communications, Inc., WC Docket No. 11-10, at 3 (October 10, 2017) (noting that “best efforts are typical of the level of service offered to businesses in rural areas”); Comments of the USTelecom Association, WC Docket No. 11-10, at 11 (October 10, 2017) (stating that “in most instances, USTelecom members’ ‘best efforts’ rates are the same for residential and business mass market deployment . . .”).

¹³ See *FNPRM* at ¶ 30.

¹⁴ AT&T Comments at 11.

¹⁵ USTelecom Comments at 11.

In short, the comments in this proceeding underscore that the Commission should retain and expand the separate reporting of contractual or guaranteed throughput rates for business/enterprise/government services. These data are essential for the Commission to evaluate whether its predictions regarding competition in the business data services markets in the middle term—predictions that underlay the massive deregulation of the business data services markets in the 2017 *Business Data Services Order*—prove accurate, and commenters have not identified a meaningful burden associated with this data collection, let alone a burden that outweighs the significant importance of these data.

II. COMMENTS UNDERScore NEED FOR COMMISSION TO RENEW EFFORTS TO ESTABLISH STRUCTURED SAMPLE DATA METHODOLOGY FOR MOBILE PERFORMANCE TESTING.

Comments in this proceeding also underscore the need for the Commission to renew its efforts to establish a structured sample data methodology for mobile performance testing, analogous to the Measuring Broadband America program for fixed broadband. T-Mobile opposes the collection of actual speed test data because inconsistencies between different measurement methods render the data unhelpful.¹⁶ Similarly, Verizon states such “data would be both redundant and inconsistent across providers, since the Commission identifies no systematic way to conduct its testing.”¹⁷ These inconsistencies are precisely the reason that the Commission should endeavor to come up with a standardized methodology for gathering structured sample data. AT&T argues that “the Commission could obtain [‘on the ground’ mobile broadband speed] data from 3rd party sources such as Ookla and RootMetrics.”¹⁸ Indeed, to the extent that

¹⁶ See Comments of T-Mobile USA, Inc., WC Docket No. 11-10, at 11 (October 10, 2017).

¹⁷ Verizon Comments at 5.

¹⁸ AT&T Comments at 8.

such sources are gathering statistically significant, structured sample data, the Commission may wish to contract with one of them to assist in the development and execution of its testing program, as the Commission has done with SamKnows for fixed broadband performance testing. Just as with data on business services, the Commission should not abrogate its duty to collect important information merely because it may be challenging to get providers to adhere to a uniform methodology.

Respectfully submitted,

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