

# Congress of the United States

Washington, DC 20510

April 18, 2017

# 312

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai,

We write to urge you to postpone the vote on the Business Data Services (BDS) Report and Order, which is currently scheduled to be considered by all three Commissioners at the Federal Communications Commission's (FCC) Open Meeting on April 20<sup>th</sup>.

BDS are the high-capacity broadband connections that form the backbone of our communications network, carrying the massive data flows from wireless providers, small businesses, schools, universities, libraries and government agencies. A BDS connection is often used when a consumer makes an ATM transaction, swipes a credit card at a local gas station, or uses a smartphone to make a call, send a text, or search the internet. In 2013 alone, the BDS market generated \$45 billion in revenue.<sup>1</sup> BDS services guarantee uptime and service quality, features that are essential for small businesses that rely on these connections to conduct their business.

Regrettably, the BDS market suffers from a lack of competition, which is driving up costs and leaving businesses, libraries, schools, and anyone who relies on the BDS market with limited choices. The FCC's recent data collection in the BDS proceeding is the largest in the agency's history. According to information gathered by the FCC, approximately 73 percent of BDS locations may only be served by one BDS provider, while 97 percent may only be served by one or two providers.<sup>2</sup> This lack of competition could result in artificially inflated prices for BDS services which may ultimately be passed on to consumers. However, the BDS Order's conclusion that there is "robust" competition in these markets, justifying further deregulation, appears to be at odds with the data collected by the FCC.

In the BDS market, we need more protections for competitors and small businesses, not greater market control by incumbents. We are concerned that the proposed BDS Report and Order does not adequately promote competition or apply appropriate pricing protections where competition does not exist, which may result in even higher prices for these essential BDS services.

The Small Business Administration's Office of Advocacy raised concerns that this BDS proposal could result in fewer BDS choices and higher prices for small businesses across America. We

---

<sup>1</sup> "Tariff Investigation Order and Further Notice of Proposed Rulemaking." Federal Communications Commission, 2 May 2016. Web. 14 Apr. 2017. <[https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-54A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-54A1.pdf)>.

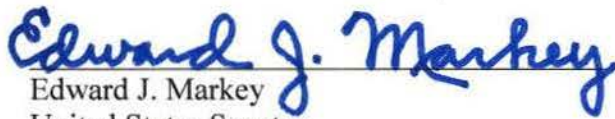
<sup>2</sup> Ibid.

agree with the Office of Advocacy's concerns and believe, as they do, that the Commission should delay this vote, because the order as currently structured could have a negative effect on small businesses and the competitive market. Further, should this order be implemented immediately and without any transition period, the businesses and consumers relying on BDS could experience disruptive price increases.

As we work to usher in the next generation of wireless technology, higher BDS prices and few choices could hamper the development and deployment of 5G technologies, which will heavily rely on BDS connections for backhaul. We are also concerned that draft Order would immediately end and not extend for any period of time the essential wholesale voice condition, which helps competitive telephone providers continue to access telephone networks to provide small, mid-sized and even large businesses, schools, libraries and governmental agencies an option for essential voice services and reduce the risk of incumbent carrier monopolies in this important segment of the marketplace.

In light of these concerns, we respectfully request that you postpone the vote on the BDS Report and Order. Thank you for your attention to this important matter.

Sincerely,

  
Edward J. Markey  
United States Senator

  
Mike Doyle  
Member of Congress





OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

July 17, 2017

The Honorable Mike Doyle  
U.S. House of Representatives  
239 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Doyle:

Thank you for your letter regarding the Commission's proceeding on the market for business data services (BDS), the importance of competition in the BDS market, and the impact of the Commission's rules on small businesses. Your views are very important and your letter has been entered into the record of the BDS proceeding.

After twelve years of studying market conditions, a massive data collection, and a robust public record developed through numerous requests for comment, the Commission adopted an order modernizing the Commission's BDS rules. Specifically, that order recognized that incumbent local exchange carriers have been losing market share in the \$45 billion BDS market, and that cable operators offer vigorous facilities-based competition to incumbents. Nonetheless, the order determined, based on the record evidence, that price-cap regulation remained appropriate in roughly 40% of price-cap counties nationwide. Accordingly, the Commission maintained its regulation of special access services in these areas.

In your letter, you suggest additional protections for small businesses and the need for a reasonable transition as well as a delay of the Commission's vote. Although the Commission was unable to accommodate your every request, I note that the Commission did deny incumbent carriers a catch-up adjustment to their existing rates in non-competitive areas and implemented a staged transition: In newly deregulated areas, price-cap carriers cannot raise their tariffed rates for special access services for a period of six months and have three years to transition to de-tariff their services. The Commission also emphasized that incumbents may not use the de-tariffing process to disturb existing contractual or other long-term arrangements—a contract tariff remains a contract even if it is no longer tariffed. Finally, the Commission adopted downward pricing flexibility in still regulated areas to ensure that small businesses in rural America have the opportunity to receive the same discounts now available in urban areas.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Ajit V. Pai".

Ajit V. Pai



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

July 17, 2017

The Honorable Edward J. Markey  
United States Senate  
255 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Markey:

Thank you for your letter regarding the Commission's proceeding on the market for business data services (BDS), the importance of competition in the BDS market, and the impact of the Commission's rules on small businesses. Your views are very important and your letter has been entered into the record of the BDS proceeding.

After twelve years of studying market conditions, a massive data collection, and a robust public record developed through numerous requests for comment, the Commission adopted an order modernizing the Commission's BDS rules. Specifically, that order recognized that incumbent local exchange carriers have been losing market share in the \$45 billion BDS market, and that cable operators offer vigorous facilities-based competition to incumbents. Nonetheless, the order determined, based on the record evidence, that price-cap regulation remained appropriate in roughly 40% of price-cap counties nationwide. Accordingly, the Commission maintained its regulation of special access services in these areas.

In your letter, you suggest additional protections for small businesses and the need for a reasonable transition as well as a delay of the Commission's vote. Although the Commission was unable to accommodate your every request, I note that the Commission did deny incumbent carriers a catch-up adjustment to their existing rates in non-competitive areas and implemented a staged transition: In newly deregulated areas, price-cap carriers cannot raise their tariffed rates for special access services for a period of six months and have three years to transition to de-tariff their services. The Commission also emphasized that incumbents may not use the de-tariffing process to disturb existing contractual or other long-term arrangements—a contract tariff remains a contract even if it is no longer tariffed. Finally, the Commission adopted downward pricing flexibility in still regulated areas to ensure that small businesses in rural America have the opportunity to receive the same discounts now available in urban areas.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Ajit V. Pai". The signature is stylized, with the first name "Ajit" being particularly prominent and flowing into the last name "Pai".

Ajit V. Pai