

In re: Docket No. 16-143, Business Data Services in an Internet Protocol Environment

The Federal Communications Commission should implement a light touch regulatory model for business data services. Where a carrier needs to purchase for resale facilities provided by an incumbent local exchange carrier, a competitive local exchange carrier, or a cable company, prices should be market-based where negotiations are conducted based on an exchange of value determined by the parties. Also, the Commission should re-evaluate what it means by the term “competition.” Competition has been erroneously interchanged with “consumer choice.” I provide my reasoning below.

Special access services have evolved seemingly exponentially since the early 1990s. Prior to the 1996 amendment of the Communications Act of 1934, special access services were indeed dominated by incumbent local exchange carriers. By the middle 1990s cable companies, the only other facilities-based entities that had any chance of competing with incumbent local exchange carriers, had a very small share of the alternative access or by-pass markets. What they did have was vision to develop and use, at that time, what was considered innovative DOCSIS technology, a technology that would help them acquire more of the residential and enterprise markets for internet access.

Resellers, on the other hand, could never, in my opinion, be considered serious providers of telecommunications services. Take residential services. There was nothing more disconcerting to me as a young staffer at the Florida Public Service Commission during the 1990s to see complaint after complaint filed against resellers only for resellers to blame an issue on an underlying carrier. In my opinion, if a carrier wanted to seriously serve the public interest, it should have entered the capital markets and raised the financing to build out its own facilities. Consumers would have been better served under that model.

Fast forward to the 21st century and it cannot be denied that cable companies and other facilities-based competitive local exchange carriers have entered the special access markets offering business and enterprise customers alternatives to incumbent local exchange carriers. Business and enterprise customers can choose between incumbent local exchange carriers, competitive local exchange carriers, and cable companies for special access services.

Regarding the pricing of inputs i.e. lines that one type of carrier may have to purchase from another type of carrier for the purpose of providing special access services, prices should be determined in the market during negotiations between carriers. The Commission is not in a position to determine the value that the parties place on an exchange. That is not the Commission’s expertise. Only the carriers can best determine the value of the consideration being exchanged and the appropriate price. Each construction, deployment, or sale of special access facilities will differ for a number of reasons including location, business climate, capital markets, etc., information that private parties have better access to and more incentive to gather and get right.

The Commission believes it should insert itself heavily into pricing matters based on the premise that by doing so, it will bring about competition and garner better results for the consumer. This premise stems from an incorrect meaning of competition. Consumers have a greater number of carriers to choose from when there are a greater number of carriers that have determined that there are ample resources at a reasonable price to compete for in order to provide a service. Before an entity competes for a single customer, the ultimate resource that allows the entity to pay for all other resources, it has to compete for financial capital, land, labor, and entrepreneurial skillsets necessary for creating and selling its

product and services. The Commission, in arguing a lack of “competition” in the business data services market, has not demonstrated that sufficient financial and natural capital exists in order to incentivize a provider to enter a market and meet consumer demand. Even if the Commission could make such an assessment, the Commission would next have to document the level of market failure, an exercise I doubt the Commission would want to endeavor given its knack for avoiding in-depth economic analysis.

Lastly, where a reseller or facilities-based carrier wishes to purchase facilities from another carrier, carriers should not be compelled to maintain legacy analog networks for this purpose. If consumer welfare is the Commission’s concern, then resellers should purchase digital facilities thereby furthering the use of more advanced technologies for the provision of broadband access.