

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

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to)	
Accelerate Investment in Broadband)	
and Next-Generation Networks)	

COMMENTS OF INTERNET INNOVATION ALLIANCE

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I. FORBEARANCE IS APPROPRIATE AS A MATTER OF LAW AND POLICY

The Internet Innovation Alliance¹ respectfully submits these reply comments in response to the Petition² filed with the Commission on May 4, 2018.

In enacting the Telecommunications Act of 1996³ FN (“the Act”) and specifically in enacting Section 10 of that Act,⁴ Congress made a choice, one that we believe was and remains wise: because technology changes rapidly – and because the Act was designed to encourage rapid changes in technology – the Act provided generous provisions for forbearance of the Commission’s rules and regulations, with a clear bias towards the granting of forbearance by providing that petitions for forbearance would become effective (“shall be deemed granted”) if the Commission did not act on the petition within a reasonable time defined in the Act.

In enacting this provision of the Act, Congress recognized not only that technology would advance rapidly and at a faster pace than in the period since the enactment of the Communications Act of 1934 but two other things as well. First, Congress foresaw that effective and appropriate regulation would not be able to keep pace with those advances in technology. It is no disrespect to the Commission to state that government process often moves more slowly than the frenetic activity sparked by innovation and the relentless progress of scientific advance that marketplace competition spurs. Second, Congress recognized that the Act’s pro-competitive

¹ The Internet Innovation Alliance is a broad-based coalition of business and non-profit organizations that aims to ensure every American, regardless of race, income or geography, has access to the critical tool that is broadband Internet. The IIA seeks to promote public policies that support equal opportunity for universal broadband availability and adoption so that everyone, everywhere can seize the benefits of the Internet education to health care, employment to community building, civic engagement and more. *Available at* <http://www.internetinnovation.org/>.

² Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, available at <https://www.ustelecom.org/sites/default/files/documents/USTelecom%20Forbearance%20Petition.pdf> (hereinafter, “the Petition”).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ 47 U.S. C. §160; supplemented by the Commission’s rules at 47 C.F.R. §§1.53,1.54.

policies would make some regulation, particularly regulation of market participants who formerly enjoyed monopoly power, unnecessary.

This is particularly true when, as the Act again anticipated, products based on different technologies and different modes of communication would begin to compete with each other, as they have. As these comments will show, one striking example of that convergence and competition has been the market for Business Data Services (BDS). The regulatory mandates for which the Petition seeks forbearance are related to outmoded technologies that will have no place in the next-generation networks of the future, making forbearance even more appropriate.

For these reasons, the Act provides for forbearance of Commission rules that are antiquated or no longer reflect marketplace realities or are “not necessary to ensure that charges and practices are just and reasonable and not unjustly or unreasonably discriminatory.”⁵ Nor are the provisions for which the Petition seeks forbearance “necessary for the protection of consumers.”⁶

The Petition offers ample evidence with respect to each of the regulations for which it seeks forbearance. As noted above, we support the view that the specific regulatory conditions described in subsections (a)(1) and (a)(2) have been met. We write separately to underscore our strong views that “forbearance is consistent with the public interest”⁷ and that the Commission’s actions in the BDS *Order* offer further evidence in favor of forbearance. As the statutory conditions for forbearance in this instance have easily been met, we therefore join with US Telecom in urging the Commission to grant the Petition speedily.

⁵ 47 U.S. C. §160(a)(1).

⁶ 47 U.S. C. §160(a)(2).

⁷ 47 U.S. C. §160(a)(3).

The Act – and the Act’s provisions for forbearance – is based on the expectation of robust competition in telecommunications markets, and this is in fact what happened. Notably in the BDS market, and throughout the range of communications technologies that serve American consumers and businesses alike, the past two decades have witnessed an explosion of innovation, deployment of new platforms and technologies, such as new cable services, Ethernet products, and a massive expansion of wireless technology.

The market for residential service is perhaps the most striking example of the trend. It reflects what the Petition notes is “a staggering decline in ILEC switched access voice line subscriptions, from 186 million in the year 2000 to 49 million in 2016 to a projected 35 million in 2018,” even as “the availability of competitive alternatives for voice service has risen dramatically.”⁸ Indeed, “[o]nly 11 percent of U.S. telephone households are projected to have ILEC switched landline voice service by the end of the year” – continuing a “steady and unabating decline from 93 percent in 2003 to 46 percent in 2010 to 16 percent in 2016.”⁹

These declines are not merely evidence of consumers’ actions in response to competitive choice. They are further and vivid evidence of technological change. As the Petition states, the decline reflects a permanent change to “providers that use their own facilities or a broadband connection to deliver voice service to their customers. . . . a projected 60 percent of American households will have replaced wireline service with wireless service by the end of the year.”¹⁰ The conclusion is inescapable that “ILEC switched voice services are subject to intense and durable competition,”¹¹ and that competition is largely facilities-based.

⁸ Petition at 7.

⁹ Petition at 8.

¹⁰ Id. It is also appropriate to note that “Even among the 40 percent of households that are projected to maintain landline voice service (either switched or VoIP), approximately 55 percent (32 million) are projected this year to obtain that service from a non-ILEC, rather than an ILEC [.]” Petition at 9.

¹¹ Petition at 10.

It is not surprising, therefore, that the BDS market would follow these trends, as business users often demand higher rates of performance and speed than residential users. Similar data exist for the BDS market to show the prevalence not only of competition but of competition that reflects technological change.

As far back as 2015, the FCC had found that 491 facilities-based competitors participated in the BDS market, all across the United States, reaching virtually every Census tract.¹² For the overwhelming majority of buildings that would need competitive lines beyond the lines controlled by incumbent local exchange carriers, such competitive offerings were either already in place, literally only a stone's throw away, or, at most, the length of a football field.¹³

As we commented in an earlier proceeding, “virtually all American businesses have access to business data services and the level of competition, spurred in large measure by the rapid entry of cable into this market, is growing, almost on a daily basis. There is simply no justification for intrusive, *ex ante* regulation, and particularly not for price regulation in a market that, by the Commission’s own data, is working and competitive.¹⁴ The Commission’s own statistics bear this out: “as of year-end 2016, ILECs’ share of business- and government-grade switched access and interconnected VoIP connections had fallen to 45 percent, down from 49 percent the previous year.”¹⁵ And, in all events, antitrust law serves as a backstop to ensure that the BDS market remains one of strong competition.

¹² See BDS Order at ¶2.

¹³ <https://ecfsapi.fcc.gov/file/60001568818.pdf>

¹⁴ Tariff Investigation Order and Further Notice of Proposed Rulemaking, *Business Data Services in an Internet Protocol Environment; Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Service*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (rel. May 2, 2016), Comments of Internet Innovation Alliance (hereinafter “2016 IIA Comments”), available at https://internetinnovation.org/images/misc_content/IIA_BDS_REPLY_COMMENTS_PDF.pdf, at 2.

¹⁵ Petition at 10, citing to FCC, *Voice Telephone Service: Status as of December 31, 2016*, Table 1 (Feb. 2018) (at 10).

The reality of the BDS market is that as far back as 2015, competitive networks offered BDS services in more than 95% of census blocks with BDS demand, covering 99% of potential BDS customers. These data reaffirm that virtually all customers that seek BDS have choices in the marketplace.

Competition in BDS remains critical to the future of users of high-speed data services, including hospitals and universities, and to American business generally. In short, most areas of the Nation – and the overwhelming majority of BDS customers and potential customers – are now enjoying what the framers of the Act wished, facilities-based competition. The existence of this competition makes a grant of the Petition both appropriate and necessary.

II. CONTINUED INVESTMENT IN HIGH-SPEED BROADBAND IS INDISPENSIBLE TO CONTINUE INNOVATION IN NEXT-GENERATION SERVICES

Granting the Petition is proper not only because it meets the statutory requirements for forbearance, but also because forbearance will itself advance the pro-competitive and pro-technology purposes of the Act. As the Petition notes, “[t]he Commission has long recognized the need to eliminate regulations that impose burdens without concomitant benefits, as well as the need to modernize its regulations to ‘encourage carriers to *invest in* and deploy even more advanced technologies as they evolve.’”¹⁶ The key here, as we have long argued, is increasing investment. Without investment, the Nation’s adoption of advanced services cannot proceed.

¹⁶ Petition, at 3 (emphasis added) , citing to *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Red 11128, 11135, App. E., ¶ 29 (2017).

This is why our organization focuses so deeply on promoting policies that attract investment to modern high-speed broadband networks.

In support of this objective, we have previously commented¹⁷ in an earlier proceeding on BDS noting the critical need to support policies that boost investment in high-speed broadband.

At that time, we noted that

Any attempt to impose regulation on an industry, such as broadband Internet, that is characterized by rapid technological innovation and convergence among technologies, should result only from detailed knowledge of that market and a firm reliance on reliable, accurate, and up-to-date data. We, therefore, applaud the Commission for its efforts, despite the resistance of some competitive local exchange carriers (CLECs) over the past decade and a half, to obtain data of this type for these proceedings. . . . Technological evolution has been the necessary companion of competition and a spur to competition rather than a force that restricts competition. * * * Investment capital at that level [necessary for national deployment of fast broadband] can come only from the private sector, not from government. Similarly, private investors will invest only where they can reasonably envision a positive return on their investment. Thus, to meet the growing demand for ubiquitous nationwide high-speed broadband deployment, including the BDS market, government should advance only those policies that actively *promote and encourage*, rather than deter, private investment.¹⁸

Those comments remain valid today, and competitive developments since 2016 only reinforce the case for forbearance in the pending Petition.

Economic arguments, too, strengthen the case for granting the Petition. In a global race for adoption of fast broadband and to meet the need to ensure every American and all American businesses have ready access to ever-faster broadband, the continuing diversion of capital from investments in high-speed broadband makes no sense. By definition, a company may invest a dollar only once – either in lower-speed technologies or in next-generation services. Requiring investment in lower-speed services, therefore reduces the quantum of investment available for

¹⁷ 2016 IIA Comments, op. cit.

¹⁸ 2016 IIA Comments, at 3-4.

investment in high-speed services that offer greater benefit to users of BDS. This result makes no sense as a matter of policy, particularly when, as the Commission has found, these markets are highly competitive.¹⁹

In sharp contrast, policies that attract private capital to investment in high-speed broadband have very high economic impact. With respect to wireless alone, one study estimates that the wireless industry accounts for \$475 billion in economic impact, or 2.6% of total U.S. Gross Domestic Product – a sum that shows a multiplier effect on employment and economic impact above many other sectors of the economy. Every dollar of wireless investment is estimated to deliver \$3.20 in economic impact.²⁰ More broadly, another study of OECD countries found the economic impact increases with broadband speeds.²¹

Similarly, the innovation that investment in high-speed broadband brings also encourages greater adoption of advanced BDS services. As competitive fiber is deployed, it becomes easier to connect to other buildings that want and need service. A study from the independent Vertical Systems Group²² recently noted that the trend towards greater adoption of fiber is both accelerating and extending its reach. Smaller and medium-sized commercial buildings, too, now increasingly enjoy the choices available to larger buildings. For the first time, a majority of buildings with 20 or more employees have access to higher speed business services such as Ethernet. And more buildings were “lit” with new fiber for the first time in 2017 than in any

¹⁹ BDS Order at ¶3.

²⁰ CTIA, “U.S. Wireless Industry Contributes \$475 Billion Annually to America’s Economy and Supports 4.7 Million Jobs, According to New Report,” April 5, 2018, available at <https://www.ctia.org/news/study-reveals-powerful-economic-impact-of-wireless-across-50-states>. The impact of broadband investments in rural areas has also been documented, see, e.g., Hanns Kutner, “The Economic Impact of Rural Broadband,” Hudson Institute, Apr. 20, 2016, available at <https://www.hudson.org/research/12428-the-economic-impact-of-rural-broadband>

²¹ Chatchai Kongaut & Erik Bohlin, “[Impact of broadband speed on economic outputs: An empirical study of OECD countries](#),” [25th European Regional ITS Conference, Brussels 2014](#) 101415, International Telecommunications Society (ITS) (2014).

²² Vertical Systems Group, “STATFLASH: U.S. Business Fiber Availability Reaches 54.8%,” April 5, 2018, available at <https://www.verticalsystems.com/2018/04/05/u-s-business-fiber-availability-reaches-fifty/>

other year. Taken together, this shows the power of competition and technology to drive markets and innovation – precisely what one would expect in a dynamic, competitive market. It’s clear why businesses would want solutions that deliver features such as advanced teleconferencing, and competitive providers are responding to that demand.

Not only do Ethernet solutions offer faster speeds and higher quality of performance than legacy TDM systems, but the availability of competition provides pricing discipline that benefits consumers. In all events, mobile broadband 5G networks transmitting data at gigabit speeds will not by definition be able to use TDM-based megabit speeds. Policies that promote faster deployment of 5G will particularly help rural America and other traditionally underserved areas and argue against continuing regulation of legacy TDM networks. In fact, the amount of investment necessary for nationwide 5G deployment is estimated to be approximately \$275 billion.²³

As we have long argued, sums of this magnitude can come only from private investment – and through adoption of policies that promote rather than delay or skew that private investment.

III. THE COMMISSION’S BDS ORDER SUPPORTS THE PETITION’S REQUEST FOR FOREBEARANCE

Given this need for greater levels of investment, the Commission’s *BDS Order*, after an exhaustive search for data, rightly and appropriately reformed the regulation of the BDS market based on the real and robust competition that now exists in the marketplace. In that Order, the Commission stated that its goal was “a regulatory environment that promotes long-term

²³Cited in CTIA, “The Race to 5G,” available at <https://www.ctia.org/the-wireless-industry/the-race-to-5g>; see also <https://www.ctia.org/news/study-reveals-powerful-economic-impact-of-wireless-across-50-states>

innovation and investment by incumbent and competitive providers alike which well-serves business data services customers.”²⁴

Further, the Commission noted that “the most dramatic change in the market over the past decade” was the broad and rapid entrance of cable into the BDS market²⁵ and, because of this shift to facilities-based competition, the Commission recognized what both major players in the market and BDS customers have long realized: the BDS market is intensely competitive, and the transition to new technology, notably Ethernet, reflects what customers actually want, and so there should be no undue preference for older technologies that customers do not want and that will not meet the needs of large, medium, and small enterprises that use BDS.

Since the *BDS Order*, both competition and availability of fiber have increased – signs of a well-working competitive market that does not need further regulation or further subsidization of lower-speed antiquated technological options. Consumers in the marketplace have spoken, and technology has advanced. The Petition merely marks the next necessary step in reflecting a well-working competitive market characterized by technological advance and an important step towards encouraging further investment in advanced BDS networks, as the *BDS Order* desires.

IV. CONCLUSION

For the foregoing reasons, we urge the Commission to grant the Petition speedily so that more American businesses will have access to advanced business data services and to do so in the confidence that the BDS market will continue to remain robustly competitive after the Petition is granted.

²⁴ BDS Order at ¶1.

²⁵ BDS Order at ¶55.