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For Immediate Release:

BUSINESS DATA SERVICE MARKET PLAGUED BY ILLEGAL COST ALLOCATIONS, OVERCHARGES AND EXCESS PROFITS

Consumer Federation of America and New Networks Institute data show deeply anti-competitive, anti-consumer practices

The Consumer Federation of America (CFA) and the New Networks Institute (NNI) filed joint comments in the Business Data Services (special access) proceeding at the Federal Communications Commission, June 28th, 2016. They have issued the following statement.

The Commission’s initial order in this proceeding, while a step in the right direction, is merely a baby step. It does not address the profound flaws, deeply anti-competitive and anti-consumer contracting practices and illegal cost allocation schemes that permeate the Business Data Services market.

Our analysis builds upon CFA’s analysis of publicly available data, NNI’s analysis of cost data in New York, and our joint review of the FCC’s massive data set, demonstrating that the market for Business Data Services is rotten to the core.

- BDS is extremely concentrated, resulting in the pervasive abuse of market power, as evidenced by prices that are far above costs and profits that are not merely “supranormal,” but astronomical.
- There has been a massive, illegal cross-subsidy in which local service has been forced to bear much of the cost of Business Data Service, effectuated by the misallocation of network equipment and operating costs.
- BDS is riddled with anti-competitive terms in contracts that have undermined the ability of competitors to enter the market.
- The market exhibits a near-cartel like behavior in which the local franchise monopoly core of the industry has been maintained because local telephone companies have failed to overbuild and compete with one another.
- When dominant incumbent local exchange carriers contract for out-of-region Business Data Service (to support their nationwide wireless and multi-market business offerings) they always contract with the other incumbent local exchange companies – rather than new entrant competitors. This reciprocity has the effect of severely reducing the potential market for new entrants.



- With competition in Business Data Service throttled by this quasi-cartel, the dominant local exchange companies run a vicious price squeeze against their wireless competitors, charging them three times as much as they charge their in-region wireless subsidiaries.

Every penny of this pricing abuse comes out of the pockets of consumers in three ways.

1. Higher charges for the goods and services that users of Business Data Service must recover in the prices they charge for their goods and services.
2. Excess profits of the dominant incumbent local telephone companies.
3. Excess charges for phone service illegally imposed local ratepayers as a result of the misallocation of costs.

There has been clear evidence of these abuses for over a decade, but the FCC consistently turned a blind eye. Rather than admit that competition had failed to develop as it theorized, the Commission just stopped gathering and publishing the data that could demonstrate the magnitude of market failure.

So clear is the evidence of market failure that Verizon and AT&T have blocked NNI from reviewing the confidential data they have filed at the FCC and Verizon and INCOMPAS, a trade association of competitive Business Data Service providers, recently have agreed to the existence of the problem. The agreement, at best a starting point,

1. admits that there is a vast swath of non-competitive markets, although they cannot agree on the precise definition of competition.
2. accepts that the burden of proof should be on those who claim competition exists and the Commission must carefully and closely monitor the functioning of the Business Data Services Market.
3. supports regulation of markets deemed not to be competitive, with immediate price reductions and a going forward price adjustment that reflects substantial productivity gains that should be passed through to consumers.

Ironically, this agreement leaves unanswered many of the key questions that we have raised in today's filing. Therefore, our recommendations can be seen as guidance on how the FCC should build the regulatory structure that Verizon admit is necessary.

1. The FCC must assert its regulatory oversight over special access services as they move closer and closer to the end-user to accommodate higher levels of traffic. Whatever technologies are used to deliver service in the first 100 feet, the high capacity transmission services that bring the data close to the consumer must remain telecommunications services and be subject to the requirements that the rates, terms and conditions are just, reasonable and nondiscriminatory.
2. The FCC must conduct a full, audited review of special access costs before it sets future rates for regulated services. This review should set a productivity factor that reflects the real technological and economic progress that has been and is being made in special access. The results of that review should apply not only to future prices, but must also be applied to past rates to bring current levels into line with reality. Without such an adjustment, special access rates cannot be deemed to be just and reasonable.



3. While the FCC has proposed to ban the most egregiously anti-competitive terms and conditions in contracts on a going forward basis, the illegal nature of the existing contracts requires that the FCC afford users the opportunity to renegotiate, or to abrogate those contracts at any point prior to their expiration.
4. The FCC must ensure that any transition away from a copper network does not adversely affect the small businesses that are the engine of job growth in our economy. Careful analysis of properly accounted costs and revenues must be conducted before any transition away from copper is authorized and the FCC must ensure that small businesses have access to special access services on just, reasonable and nondiscriminatory rates terms and conditions. This analysis must also take into account the costs that would be imposed on all businesses, in terms of rendering equipment inefficient or useless by a transition.

CFA and NNI look forward to examining the comments in the proceeding as the launch pad for a thorough reform of oversight of Business Data Services, which are rapidly becoming one of the essential services to support the spread of the digital communications revolution. As the amount and diversity of data traffic increases high volume, high performance data transport becomes more and more critical to the delivery of customer services of various types, including:

- Wireless, which has emerged as the core service in the 21 century digital communications network,
- Ubiquitous, distributed communications networks, which are becoming a pervasive Internet of Things (IoT), that is vital to lower the costs and ensure the quality of more and more services.
- Large institutions – like businesses, health facilities – that increasingly rely on real time movement and sharing of data to function more efficiently, and
- Small businesses that increasingly require the high quality, high capacity connections that only Business Data Services can provide.

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The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, nearly 300 of these groups participate in CFA and govern it through their representatives on the organization's Board of Directors and the annual Consumer Assembly. CFA has been involved in communications, media and Internet policy for decades in legislative, regulatory and judicial arenas and has advanced the consumer view in policy and academic publications.

New Networks Institute (NNI), established in 1992, is currently a consortium of independent experts, analysts, auditors and lawyers; our new project is called "Fixing Telecom". NNI has conducted extensive analysis of the cost of telecommunications service in general and the misallocation of costs from special access to local service in particular. These have been filed in the above captioned proceeding and other directly related ongoing proceedings.

- The filing is available at: <http://ow.ly/Ka6c301J7jZ>



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