



NEWS

Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

News Media Information 202-418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

FOR IMMEDIATE RELEASE:
September 18, 2013

NEWS MEDIA CONTACT:
Matthew Berry, 202-418-2005
Email: Matthew.Berry@fcc.gov

STATEMENT OF COMMISSIONER AJIT PAI ON BUREAU ADOPTION OF SPECIAL ACCESS DATA COLLECTION

One year ago, the Commission suspended pricing flexibility for special access services with the promise of “final conclusions on the need for overall reform of the special access marketplace to occur in 2013.”¹ That was an aggressive timetable then, and it is thus no surprise that we have fallen eight months behind schedule already.² Today’s *Order* submitting the data collection to the Office of Management and Budget is a step in the right direction, and I welcome the Wireline Competition Bureau’s efforts to reduce the burden of the data collection (the original estimated burden of the collection was 856,614 hours³).

Nevertheless, I am concerned that one aspect of the *Order* exceeds the authority the Commission delegated to the Bureau: the decision to collect some potential competition data on a census-block rather than a location-by-location basis. Last December’s *Data Collection Order* required competitive providers to report facilities “capable of” providing dedicated service so that the Commission could get a full view of market competition—both actual and potential.⁴ Indeed, one key reason I supported last December’s data collection order was that it “incorporate[d] not just existing competition but also potential competition into our analysis,” including “information about facilities capable of providing dedicated service as well as competitive offerings regardless of the facilities used.”⁵

And yet the *Order* exempts cable operators (but not other competitive providers) from reporting certain in-place but out-of-service facilities “capable of” providing dedicated service.⁶ This new

¹ *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. 05-25, RM-10593, Report and Order, 27 FCC Rcd 10557, 10561 n.16 (2012).

² *Id.* at 10653 (Statement of Commissioner Ajit Pai) (explaining the data collection would need to be submitted to the Office of Management and Budget by January 2013 for any chance of reaching final conclusions in 2013).

³ FCC, Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, 78 Fed. Reg. 9911 (2013), available at <http://go.usa.gov/DNMQ>.

⁴ *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. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318, 16331, para. 31 (2012) (*Data Collection Order*).

⁵ *Id.* at 16442 (Statement of Commissioner Ajit Pai), available at <http://go.usa.gov/DNMY>.

⁶ *Compare Order* at para. 26 (“[Cable operators within their franchise areas] must report those *Locations* with *Connections* owned or leased as an *IRU* that are connected to a *Node* (*i.e.*, headend) that has been upgraded or was built to provide Metro Ethernet (or its equivalent) service . . . regardless of the service provided over the *Connection* or whether the *Connection* is idle or in-service.”), with para. 27 (“For *Locations* with facilities that are *not* linked to

(continued . . .)

exemption is not “consistent with the terms of” the *Data Collection Order*,⁷ which made clear that the Bureau should collect data about *all* communications pathways with the “capability to provide a dedicated service”—no matter “the medium used (*e.g.*, whether it is fiber, copper, or coaxial cable).”⁸ To be sure, the claim is that this potential competition data will nonetheless be gathered at the census-block level “where the cable system operator reports making broadband service available,”⁹ but the *Data Collection Order* specifically contemplated and rejected that possibility: “[I]t would not be consistent with this Report and Order for the Bureau to amend the data collection to require census block information rather than location-by-location information . . . about such facilities.”¹⁰

When we move forward with our review of the enterprise data services market, I hope we have data “sufficient to analyze the marketplace fully and complete this proceeding.”¹¹ But I fear this *Order* presages a different direction. An incomplete picture of competition in this market is likely to lead to inappropriate regulatory intervention. I cannot support that outcome, and I doubt the courts, providers, and ultimately enterprise customers themselves will either.

(. . . continued from previous page) _____

a *Node* capable of providing Metro Ethernet (or its equivalent), cable system operators [within their franchise areas] must report in-service *Connections* that were used during the relevant reporting period to provide a *Dedicated Service* or a service that incorporates a *Dedicated Service* . . .”).

⁷ *Data Collection Order*, 27 FCC Rcd at 16340, para. 52.

⁸ *Id.* at 16325 n.38. The *Order* does not suggest that the exempted connections are not “capable of” providing dedicated service, only that the Bureau is “particularly interested in *Connections* that have been upgraded to business class Metro Ethernet (or its equivalent),” *Order* at para. 26, and acknowledges that facilities not linked to upgraded nodes *are* “capable of” providing dedicated service since cable operators must still report “in-service *Connections* that were used during the relevant reporting period to provide a *Dedicated Service*,” *id.* at para. 27.

⁹ *Order* at para. 27.

¹⁰ *Data Collection Order*, 27 FCC Rcd at 16340 n.112.

¹¹ *Id.* at 16442 (Statement of Commissioner Ajit Pai).