

**Remarks of FCC Chairman Tom Wheeler
INCOMPAS Policy Summit
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This is my first time speaking to you since you became INCOMPAS ... Congratulations on the new name ... I can neither confirm nor deny that your rebranding is what inspired us to rebrand the non-descriptively termed “special access” as Business Data Services.

This is the second time I’ve had the privilege of being on your stage. The message, however, is unchanged: competition, competition, competition. Today, I want to visit with you about three things in particular: competition for Business Data Services, competition in the video marketplace, and the competition for new services and innovation that flows from an Open Internet.

Let’s start with Business Data Services.

Last week, INCOMPAS and Verizon made an important contribution to the public discussion by submitting a joint letter calling upon us “to adopt a new approach to special access regulation.”

That was an important step. By itself, it demonstrated that the market is changing and that past divisions need not produce future disagreement. The principles you and Verizon articulated are very important. ...and will be very helpful to the Commission as it moves forward. Both Chip Pickering and Verizon’s Kathy Grillo deserve a special shout-out. I should also observe, this is classic Chip; he has always looked at politics by asking, first and foremost, how we can reach solutions. He did that in Congress and now he’s taking the same action-oriented approach as your CEO.

My own views are in significant accord with your letter. And that’s not a surprise, because finding common ground should start with common sense, and I believe the principles I am supporting are firmly based in the realities of the marketplace.

That marketplace is changing – fast. New technologies offer IP-based products alongside the traditional legacy circuit-based products. New entrants, such as cable companies, play a growing role in the BDS market, supplementing the services offered by incumbent and competitive carriers alike, and in some markets changing the competitive dynamics.

And the importance of Business Data Services to the economy is becoming ever more important. Think about wireless competition today and the coming of 5G wireless networks and the Internet of Things. According to Intel, the number of connected smart devices is going to increase from 15 billion in 2015 to 200 billion in 2020. Fifth-generation wireless trials have already begun, and the FCC is preparing to designate spectrum for 5G this summer.

I have repeatedly said that American leadership in 5G is a national priority. But because 5G will be the first mobile technology to add the use of millimeter wave spectrum at scale, wireless signals will travel shorter distances. This means that 5G cell sites will be much more densely located than traditional networks. We will see a proliferation of new cell sites requiring expanded backhaul capacity – and backhaul is a Business Data Service. Without a healthy BDS

market, we put at risk the enormous opportunity for economic growth, job creation and U.S. competitiveness that 5G represents.

But BDS competition remains uneven. According to FCC data, as of 2013, competitive pathways, including cable, reached less than 45 percent of locations where there is demand, and only 25 percent used only their own networks. Cable's presence continues to grow but it is clear that there are locations that do not benefit from competition. And competition differs among products, with more competition for higher bandwidth services, but less for lower bandwidth services.

For the Commission to be effective, our rules must be based on market realities. So we need a fresh start.

To have such a fresh start, we need broad principles, we need to work to find common ground, and we need to seriously look at the best ways for the Commission to act. And we need to do it quickly. My goal is that the Commission adopt the proposed BDS framework in April and that we conclude the proceeding, quickly, certainly no later than the end of the year. Now is the time for action. I assure you that I will treat this issue with the urgency it deserves. I expect that same from you and other stakeholders in this debate.

So what exactly are we proposing? My plan would establish a new competition-triggered deregulation framework for Business Data Services.

It would stop the traditional use of tariffs for BDS; discard the traditional classification of "dominant" and "non-dominant" carriers, and, I expect, de-regulate competitive markets that are now subject to price regulations.

This new de-regulatory, de-tariffing framework is built on four fundamental principles.

First, competition is best. Where competition exists, there is little for government to do except to maintain the traditional oversight of telecommunications services. But where competition does not exist, government's role is to ensure that non-competitive market conditions cannot disadvantage business customers and their ability to compete and innovate in downstream markets. To that end, we propose the adoption and application of a new competition test designed to identify the markets in which current and potential competition is bringing material competitive effects to customers.

Second, the new regulatory framework must be technology-neutral. Companies and technologies that are delivering the same kind of BDS should be treated the same. That means that where TDM and IP deliver substitutable services, the market must be judged by looking at both. It means that all companies that provide BDS must be subject to the same overarching legal framework.

Third, Commission actions should encourage the transition from TDM to IP. The supply of circuit-switched BDS is still big business, but the future is in IP-based, packet-switched communications. That is why, for example, we propose to eliminate unfair contractual provisions that lock customers into legacy telecommunications technology. Specifically I have asked the Commission to vote on April 28 to declare unlawful contract terms used in a series of tariffs that include so-called "all or nothing" contracts that require a customer to make all of its purchases on a single set of terms, as well as the use of excessive penalties that punish customers when they fall short of their volume commitments. Unfair contractual terms can both slow the

transition by customers away from TDM and to IP and, by limiting the use of IP-based products like Ethernet, actually discourage investment in the construction of new BDS facilities.

Fourth, regulation should be constructed to meet today's marketplace – and tomorrow's. To that end, we propose that tariffing of BDS be ended in all markets, for all BDS products. We would end the regime based on dominant and non-dominant carriers. Our focus will be to ensure that lack of competition does not unfairly harm commercial customers or the consumers who rely upon them. Where there is no competition, we should ensure that business customers are not overcharged and competition not unfairly disadvantaged.

A new, effective framework matters because Business Data Services matter. They affect what the consumer pays for virtually anything that uses telecommunications. (And what doesn't?) Their cost is built into the price of virtually anything a consumer might buy. Harold Feld of Public Knowledge likens Business Data Services to crude oil. You would never buy a barrel of oil, but the price of crude impacts what you pay for almost all energy services. The same can be said of business data services.

Business Data Services matter because they are at the heart of virtually everything using telecommunications. Consider, for instance, wireless communications. When you make a call or search the Web on your mobile phone, those communications typically get handed off from the cell tower to BDS lines.

Business Data Services matter because anchor institutions like hospitals, schools and libraries depend on these reliable, high-capacity lines to serve their communities. When you withdraw cash from an ATM, or your credit card is swiped, you count on BDS connections.

And, of course, this audience knows Business Data Services matter because they provide the last-mile connections competitive carriers rely upon in many cases to serve multi-location customers, so they can enjoy the traditional benefits of competition, including lower prices.

So let me conclude this topic by emphasizing, again, the need to start a dialogue now and reach a decision quickly. Our principles may be firm, but our policy proposals are not set in stone. We are asking a lot of questions in our proposal. We want to listen, and learn, and, ultimately, act. With an open, collaborative process, we can and will bring this home.

We need your help. You have already done much to find common ground. But there is more to do and I am counting on you to double-down your efforts. We can get this done and I am determined to do so.

Now, let's shift to another area where competition issues increasingly demand the Commission's attention: the video marketplace.

With all due respect to the baseball season just getting underway, watching video is clearly our national pastime. The average U.S. adult watches five-and-a-half hours of video a day. For a long time the story of U.S. video programming was scarcity: three networks, and only a handful of local broadcast television stations. Abundance came in the form of 500-channel packages on cable and satellite. But while there was an abundance of channels, there continued to be a scarcity of outlets. Now, we are entering the third era of video – competition, which should be the best yet. It provides consumers the ability to mix and match the packages of programming

they want; from a single provider or many; over dedicated network facilities, using the Internet or both.

But this golden era of video competition faces threats. Notably, it can be artificially blunted by incumbent pay-TV providers, who can play both ends against the consumer in the middle – by supplying broadband connectivity to online video providers while at the same time competing with these emerging video providers for viewers.

My concerns about video competition ties together a number of high-profile issues that have come before the Commission, notably the proposed mergers of Comcast and Time Warner Cable, which we rejected, and the AT&T/DirecTV deal, which we approved with conditions.

Our set-top box item speaks to the issue of competition in the video marketplace as well. Ninety-nine percent of pay-TV customers lease set-top boxes from their cable, satellite or telco providers. On average, consumers are paying \$231 a year to rent those boxes, collectively \$20 billion. Yes, despite Congress's mandate, they have no competitive choice.

Our proposal protects copyright and consumer privacy. There are those, however, who see shortcomings in our proposal. Whether these concerns are more than a smokescreen for their overall opposition will be determined by whether there is input about how best to write language to accomplish our goal of protecting copyright and privacy. We believe our proposal clearly protects both copyright and privacy, but if it can be made better, we are open for suggestions.

Clearly, it's in the public interest to introduce competition in the set-top box marketplace. But it's beyond that, it's the black letter of the law. Thank you to INCOMPAS for your advocacy on this issue.

Another issue where your support has been much appreciated is net neutrality.

Access to the Internet may be the most important commodity that exists today. In an economy built around information, broadband is the key to individual and corporate opportunity. Broadband must be fast, fair, and open.

Our approach to Internet openness is simple. We must enforce the bright-line rules for no blocking, no throttling and no paid prioritization. We must ensure transparency. And we must apply the case-by-case standards in order to protect consumers from harm.

We believe in permission-less innovation, and that's what we have in place. Permission means you have to ask before you can act. But companies – whether entrepreneurs or networks – do not need to ask before bringing new products and services to market.

It is ironic that the same voices that complain that the open Internet rules aren't sufficiently certain also complain about the Commission's ability to create certainty through ex-post examination of the market. That's what we're doing with the policy reviews of zero rating and data caps underway right now. There is no definite end date or predetermined outcome for this inquiry, but there are principles. Here's one obvious principle that has been a consistent underpinning of FCC precedent for decades: An incumbent should not be able to use its position as a gatekeeper to unfairly discriminate against unaffiliated content or services that may, today or tomorrow, pose a competitive threat to the incumbent's own business.

For too long we've played a regulatory lawyer's game dancing back and forth among legacy regulatory categories. That's the wrong question. The right question is posed from the perspective of the consumer: Is his or her choice being unfairly constrained? If it is, then that consumer would see higher prices, lower quality and less innovation. If it is not, then incumbents and challengers alike will have to compete on the consumer-benefitting merits – with new features, new packages and with access to new programming.

Let me close by briefly going back to 5G wireless. The U.S. led the world in the development and deployment of 4G LTE networks and the payoff was the creation of hundreds of thousands of new U.S. jobs. American technology and software are at the heart of networks around the world and American apps are on devices around the world as a result of our 4G leadership. 5G presents a new opportunity for U.S. leadership that promises similar if not greater benefits.

We live in a world in which the regulatory decisions we make today shape the reality that will exist years from now. In a world that will be increasingly wireless, this nation must be a world leader. That means we must have adequate spectrum – something we are addressing in the Incentive Auction and this summer's 5G spectrum decision. That also means we must have open networks that invite innovation – something we have seen as venture capital Internet-related investment soared 35 percent post-Open Internet order. And that means the Business Data Service connectivity among 5G cell sites must be fast and fair – something addressed in this month's rulemaking.

So, yes, it is time for a fresh start. A start that leads to national leadership in 5G. A start built around meaningful competition and deregulation for the “crude oil” of BDS. A start structured on a level playing field for all providers of similar services. A start that re-energizes the analog-to-digital transitions. A start that reduces consumer costs and increases consumer choices.

I guess that re-start could be summed up in three words: competition, competition, competition.

Thank you.