

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143, GN Docket No. 13-5, WC Docket No. 05-25, RM-10593; *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141.

If you've heard the expression "low-hanging fruit," you know that it refers to something that is easy to achieve or obtain.¹ As it turns out, for a variety of reasons, apple growers and scientists advise against literally picking the low-hanging fruit from a tree.² Nevertheless, the phrase still has relevance in other contexts.

Take, for example, the transport services we address in this item. In the 2017 *BDS Order*, the FCC called transport services the "low-hanging fruit" for competitors in the business data services marketplace.³ This is because transport service providers typically carry higher volumes of voice and data traffic from one point of traffic concentration to another within or across telecommunications networks. As a result, these services offer a bigger revenue opportunity for new entrants that can more easily justify the investment needed to deploy transport networks themselves. These market realities and the growth in demand for transport in our increasingly digital world have fueled a lot of competition throughout the country among competitive carriers, fiber providers, cable companies, and incumbent carriers—some major markets have as many as 28 competitive transport providers.

As a result, today we prune unnecessary and burdensome regulations governing price cap incumbent carriers' transport services. Specifically, we affirm the FCC's previous findings that widespread and increasing competition in the supply of business data services transport justifies relieving price cap carriers of ex ante pricing regulation and tariffing of their lower-speed, legacy transport services. In so doing, we respond to a decision by the Eighth Circuit Court of Appeals last year. In that decision, the court repeatedly affirmed the Commission's deregulatory policy judgments in the 2017 *BDS Order* as reasonable, remanding solely on a narrow procedural issue that we address today.⁴

Given the competitive trends in transport, we also relieve price cap carriers of unnecessary unbundling obligations. Specifically, we act on a petition filed by USTelecom and grant partial forbearance relief from 1996-era requirements that incumbent carriers provide legacy transport links—known as DS1 and DS3 transport—to their competitors on an unbundled basis at regulated rates. Remember, these DS1s are transport services so slow that they offer only 6% of the speed of the FCC standard for high-speed broadband—25/3 Mbps. We also condition our forbearance on a reasonable transition period to allow competitive carriers an additional opportunity to deploy their own transport networks or to purchase transport from incumbent carriers or alternative suppliers. This forbearance will not only remove costly, market-distorting regulations but also encourage facilities-based competition, the

¹ See, e.g., *Low-hanging fruit*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/low-hanging-fruit>.

² See, e.g., *Notable & Quotable: 'Low-Hanging Fruit,'* THE WALL STREET JOURNAL (Feb. 9, 2016) (quoting Priceonomics.com, "Should You Literally Pick the Low-Hanging Fruit?" (Feb. 5, 2016)), <https://www.wsj.com/articles/notable-quotable-low-hanging-fruit-1455063046>; Jeff Harrop and Mike Doherty, *The Network Effect: Beyond Supply Chains*, "Low Hanging Fruit" (Mar. 31, 2013), <https://supplychainbeyond.com/low-hanging-fruit/>.

³ *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd 3459, para. 82 (2017).

⁴ *Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991 (8th Cir. 2018).

transition away from legacy networks, and new and continued investment in next-generation networks and services for the benefit of American consumers and businesses.

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