

**CONCURRING STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

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.

Broadband connections are already essential for businesses to fully participate in our economy and will become even more important as the Internet of Things, telehealth, online education, and precision agriculture, to name just a few high-bandwidth uses that will be part of the digital transformation under way, become more widespread.

This item is about broadband for business – what providers can charge when they are the only option and when and under what terms competitive broadband providers can access parts of existing networks they use to provide business broadband services. This item continues the majority’s steady march toward deregulation and, unfortunately, in the process, continues uprooting the Commission’s longstanding and carefully balanced policies designed to foster deployment of business broadband services while at the same time protecting consumers of business broadband services where appropriate from pricing unconstrained by competition.

I was not a Commissioner in the Spring of 2017 when the Commission adopted the deregulatory Business Data Services order. But I know and have studied how that order turned the Commission’s analysis of and precedent related to this proceeding on its head, adopting an extremely deregulatory approach to Business Data Services, including finding that BDS transport services faced competition nationwide and granting nationwide relief from pricing protections. The 8th Circuit Court of Appeals remanded part of that order back to the Commission for taking actions without proper notice. Today’s order cures the notice problem, but the problems with the substance of the 2017 Order remain – it assumes, for the transport services under consideration, that the presence of potential competition in an area means that the area is completely competitive, and it removes regulations designed to ensure fair and reasonable prices, and it continues to rely on data from 2013 collected within the BDS proceeding - data that was stale and outdated at the time of the 2017 order and even more so now.

I disagree with these assumptions and would have worked toward a different outcome in the BDS proceeding. However, I recognize that there is a competitive market for these services in many parts of the country and I believe that evolution away from TDM-based transport over copper, toward higher speed fiber connections is where the network is headed - so I concur with this portion of the item.

I’m also voting to concur with the order partially granting USTelecom’s forbearance requests related to TDM DS1 and DS3 transport. The majority finds that TDM BDS DS1 and DS3 transport links are functionally equivalent to the same links ordered as unbundled network elements – or “UNE’s. So, it uses the same analysis it used in the 2017 BDS order and in today’s BDS remand order, analysis characterized by counting “potential competition” in a specific place as a basis for assuming that there is competition in the area. I disagree with this analysis and method of measuring the presence of competition. But, I know that the copper transport lines of the legacy telephone network are no longer the only service option. So, I believe that it makes sense to look at obligations that were put in place for a network that has largely been replaced to consider whether they are still serving the purpose for which they were adopted, as forbearance petitions like the one USTelecom filed require us to do.

In considering this or any request to remove regulations through forbearance, I will look, as part of the statutorily required forbearance analysis, to see if the Commission would still be meeting its statutory obligations and key missions in the absence of the regulations in questions. In this case, this analysis is necessary to ensure that the Commission doesn’t take actions that undercut competition. In considering the TDM DS1 and DS3 transport links at issue in this order, I believe that the network is rapidly evolving away from TDM-based transport over, toward higher speed fiber connections which will

bring high-speed, future-proof connections into communities will to support 5G networks. And, I believe that a three-year transition period will help most current users of DS1 and DS3 UNEs find other ways to deliver the products and services to their customers. I thank the Chairman for resisting calls to reduce the transition period – which, to me, is a critical part of this order.

I also thank the Chairman for working with me to find a way to make this order work for Puerto Rico. As we are painfully aware, Puerto Rico was devastated during the 2017 Hurricane season and had its telecommunications network nearly completely destroyed. Because of the devastation, Puerto Rico is different and warrants different treatment, as the order now recognizes. As carriers continue the process of rebuilding in Puerto Rico, I think a significantly longer transition period before the granted forbearance takes effect is right and I'm glad to see that the order now includes one. This longer transition period – five years instead of three – will give competitive carriers serving in Puerto Rico more time to continue their rebuilding and recovery efforts before the changes that will come with the forbearance have to factor into their business plans. And, it will save money for customers in Puerto Rico as the prices for services that competitors in Puerto Rico use to serve their customers will not change due to the granted forbearance during the five-year transition period.

I know that even this second order addressing USTelecom's forbearance petition is not the last we will hear about it, as USTelecom's requests for forbearance from obligations applicable to certain loops remains outstanding. My vote to concur with this order addressing USTelecom's transport requests should not be read to prejudge how I will vote on the remaining forbearance requests. The Chairman has circulated a draft order to address those requests. I'm studying that order and the changes it would make and will act in a manner that considers the state of today's communications marketplace but that does not undercut competition in the name of deregulation.

I recognize that a forbearance item like this one is complex and that an intersecting Business Data Services order only makes it more so. I thank the staff of the Wireline Competition Bureau for their work in preparing it.