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Washington State Utility Commission Has BDS Issues With FCC

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Says FCC should revise or reboot analysis in wake of cable data drop

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By [John Eggerton](http://www.broadcastingcable.com/users/jeggerton)

[Related: AT&T Takes Issue With FCC's Biz Data Economics Report](http://www.broadcastingcable.com/news/washington/att-fcc-appears-driving-pre-ordained-bds-destination/157703)

Add the Washington Utilities and Transportation Commission to those asking the FCC to revise or reboot its marketplace anaylsis of the business data service (BDS), formerly special access, market.

In a letter to the FCC this week, Steven King, executive director of the commission, cited new data from cable operators that it says showed they significantly undercounted the number of locations "capable of" providing BDS services. The cable operators initially had provided data on where they were actively providing competitive BDS service but did not include places where they could provide it, but weren’t.

The FCC used the original BDS data, and a report gleaned from it, as the basis for [revamping BDS regulations](http://www.broadcastingcable.com/news/washington/wheeler-proposes-tech-neutral-special-access-approach/155349) to focus on regulating wherever it deemed a market was not competitive, rather than just regulating the incumbent telcos.

BDS lines are dedicated connections used by businesses and institutions to deliver voice and data traffic, including for ATMs and credit card transactions. The regs have been applied to the larger ILECs—Verizon, AT&T, CenturyLink and Frontier—but the chairman thinks they should apply across the board where more competition is needed.

The FCC's goal is to increase competition in the BDS market.

Cable operators have been pushing back since the FCC is proposing including their business broadband service, which has traditionally been treated as the de facto nondominant competitor to the ILECS service, in the regulatory mix based on an approach that tries to identify what player lacks sufficient competition, incumbent telco, competitive telco, or cable operator, and regulate accordingly.

King says he is fine with the FCC's goal of more competitive markets, but that given the new info from four major cable operators, the commission wants the FCC to "incorporate the undercounted BDS services information into a revised or new marketplace analysis that accurately reflected the state of the marketplace" before it proceeds any further with the BDS revamp.

CenturyLink, AT&T, Frontier Communications, FairPoint, Consolidated Communications, and Cincinnati Bell [earlier this week asked the FCC to revisit the decision.](http://www.broadcastingcable.com/news/washington/fcc-pressed-re-vet-business-data-study/158145)

Under FCC rules, telcos are required to lease BDS lines to competitors, like cable operators. But the FCC deregulated AT&T and others' special access lines in 2009 in cases where competitive triggers are met.

Those lines are the "last mile" dedicated broadband lines to businesses, which incumbent local exchange carriers like AT&T have dominated.

FCC Pressed to Re-Vet Business Data Study

**AT&T, others say the law requires it**

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**Add CenturyLink, AT&T, Frontier Communications, FairPoint, Consolidated Communications and Cincinnati Bell to the list of those who want the FCC to revisit its**[**business data services (BDS) decision.**](http://www.broadcastingcable.com/news/washington/ncta-others-seek-more-time-bds-comment/158137)

**Actually**[**CenturyLink et al. were already on the list**](http://www.multichannel.com/news/fcc/telco-coalition-forms-oppose-fcc-business-broadband-proposal/406204)**. They have just redoubled their efforts as the July 26 deadline approaches for final comments on the BDS decision, which was billed as a tech-neutral approach to** [**regulating business broadband**](http://www.broadcastingcable.com/news/washington/wheeler-proposes-tech-neutral-special-access-approach/155349) **(formerly "special access").**

**That came in a second request from the incumbent telcos for the FCC to strike a report on the business data services market (the so-called Rysman Report) and conduct new peer reviews of the revised version of the report.**

**The FCC collected data from stakeholders on the BDS marketplace for several years before releasing the first report which it used to buttress its case for BDS reforms. It only recently put out the peer reviews. But cable operators had to submit some new data and the report was tweaked and re-released along with the new data. That came on the same day initial comments were due on the BDS proposal based in part on the report.**

**CenturyLink and the others say that should warrant new peer reviews of the report, which should then be put out for comment.**

**"These steps are not discretionary," they told the FCC, "but rather mandated by the Administrative Procedure Act (APA), the DQA, and basic notions of procedural due process. Failure to take them would preclude reliance on either the original Rysman paper or the revised analysis in any final Commission order...As it now stands, the current version of that report has not been subject to such review, and parties have been unable to comment on any such reviews. If the commission does not take such steps, it cannot rely on the Rysman Report or the Revised Rysman Report in any final decision."**