

October 3, 2016

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Service*, RM-10593.

Dear Ms. Dortch:

The Federal Communications Commission (“FCC” or “Commission”) has committed to creating a new regulatory framework for Business Data Services (“BDS”) that is built on principles of competition, technological neutrality, and removing barriers to technology transitions and innovation. The Commission has also said the framework should be forward-looking to address the marketplace as it exists today and in the future. Although the signatories to this letter—Frontier Communications (“Frontier”), Sprint Corporation (“Sprint”), and Windstream Services, LLC (“Windstream”)—have diverging interests and perspectives, we believe that forging industry consensus is an important component of fulfilling the Commission’s principles of reform. As explained further below, Frontier agrees that the Commission should move forward with reform of TDM BDS.¹ Because the reform will have differing impacts on different BDS providers, Frontier, Sprint, and Windstream also agree that it is appropriate for the Commission to add two modified transition mechanisms to the phase-in of price cap reductions for TDM-based BDS services.

As the Commission explained in the *Further Notice*,² the BDS framework must ensure that the BDS marketplace functions as it would in the presence of effective competition.

¹ Although we focus exclusively on TDM in this joint proposal, Sprint, and Windstream continue to support and advocate for the remaining elements of the Verizon and INCOMPAS proposal, including Ethernet reform. Frontier does not support such Ethernet reform.

² *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; 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*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 4723, ¶¶ 364-66 (2016) (“*Further Notice*”).

Accordingly, the Verizon and INCOMPAS proposal recommended that the Commission implement a one-time adjustment to price cap levels over no more than a two-year period, while applying a revised annual X-factor to account for productivity enhancements initially and on a going-forward basis. In light of the buying and purchasing power that the largest ILECs and their affiliates have in the BDS marketplace, and the uniquely large impact that abrupt regulatory changes would have on the business operations of smaller ILECs, Frontier, Sprint, and Windstream have agreed that these proposed transition-related rules should function as a “default” to which certain modifications to the transition mechanism are warranted. While Frontier, Sprint, and Windstream continue to discuss all elements of the framework for BDS reform, including those not addressed in this submission, all three parties agree that a reduction in rates for price cap TDM services should be based on the modified transition mechanisms described below.

Default Transition. By default, all price cap ILECs should be subject to the TDM proposal delineated in the Verizon-INCOMPAS proposal to the extent that it includes a one-time adjustment in the Price Cap Index (“PCI”) and ongoing updates to the X-factor to address the effective freeze in price cap levels after expiration of the CALLS plan.³ As described in the proposal, the Commission should phase-in the one-time adjustment over no more than a two-year period. We agree that it would be reasonable for the Commission to adopt a two-year transition as outlined below. In addition, the proposal includes a revised annual X-factor to further reduce rates in light of expected gains in productivity. This revised X-factor would apply in each of the first two years during which the Commission implements the one-time adjustment, as well as in all years going-forward. This default transition mechanism is fully consistent with the Verizon-INCOMPAS proposal.

Default Transition: <i>Applies to all price cap ILECs that do not qualify for one of the two modified transition mechanisms.</i>					
	Year 1	Year 2	Year 3	Year 4	Year 5+
One-time adjustment	Two-thirds of one-time adjustment	One-third of one-time adjustment			
X-factor	Revised X-factor	Revised X-factor	Revised X-factor	Revised X-factor	Revised X-factor

First Modified Transition. The Commission should adopt a more moderate transition for any ILEC that is not the largest price cap ILEC in the state, but serves (at above a *de minimis* level) a top 100 MSA. For the purpose of determining eligibility for this transition, an ILEC

³ In the *Further Notice*, the Commission proposed to permit downward pricing flexibility in all areas. *Id.* ¶ 501. Although the Verizon-INCOMPAS proposal did not specifically address this issue, nothing in the Verizon-INCOMPAS proposal is inconsistent with maintaining such flexibility. The signatories to this letter support such downward pricing flexibility, although they have not worked through all the details of implementation.

serves a top 100 MSA above a *de minimis* level if it provides at least 25 percent of the broadband connections provided by all ILECs in the MSA as reported in its Form 477. Though the parties have not agreed on what one-time reduction the Commission should apply in the default transition, they have agreed that the Commission should implement a one-time adjustment over a three-year period for this modified transition; this one-time adjustment should be lower than the default one-time adjustment. In addition, the Commission should defer application of this modified one-time adjustment and its revised X-factor for a period of one year.

First Modified Transition: <i>Applies to a price cap ILEC that (1) is not the largest price cap ILEC in the state, and (2) serves a top 100 MSA in the state with at least 25 percent of all ILEC broadband connections in the MSA.</i>					
	Year 1	Year 2	Year 3	Year 4	Year 5+
One-time adjustment		One-third of modified one-time adjustment	One-third of modified one-time adjustment	One-third of modified one-time adjustment	
X-factor	Existing X-factor	Revised X-factor	Revised X-factor	Revised X-factor	Revised X-factor

Second Modified Transition. Sprint, Frontier, and Windstream propose that the Commission adopt a second modification for any price cap ILEC when it does not serve any top 100 MSA in the state above a *de minimis* level or operates in a non-contiguous area.⁴ For these areas, the Commission would refrain from implementing a one-time adjustment, and defer application of the new X-factor for a period of one year.

⁴ A “non-contiguous area” as used here is defined consistent with the *USF/ICC Transformation Order*. This covers, among other non-contiguous areas, Alaska, Hawaii, Puerto Rico, and Northern Marianas. See *Connect Am. Fund; A Nat’l Broadband Plan for Our Future; Establishing Just & Reasonable Rates for Local Exch. Carriers; High-Cost Universal Serv. Support; Developing an Unified Intercarrier Comp. Regime; Fed.-State Joint Bd. on Universal Serv.; Lifeline & Link-Up; Universal Serv. Reform -- Mobility Fund*, 26 FCC Rcd. 17,663 ¶ 193 (2011) (“*USF/ICC Transformation Order*”), *aff’d sub nom. FCC 11-161*, 753 F.3d 1015, 1038 (10th Cir. 2014).

Second Modified Transition: <i>Applies to a price cap ILEC that does not serve at least 25 percent of all ILEC broadband connections in any top 100 MSA in the state or is operating in a non-contiguous area.</i>					
	Year 1	Year 2	Year 3	Year 4	Year 5+
One-time adjustment					
X-factor	Existing X-factor	Revised X-factor	Revised X-factor	Revised X-factor	Revised X-factor

Past precedent and Commission policy fully justify the adoption of tiered transition mechanisms. As the Commission has held previously,⁵ the Commission acts reasonably in designing a “rate system [that] addresses the reality of a diverse LEC population.”⁶ For example, in the *CALLS Order*, the Commission concluded that a “lower target rate” for switched access services sold by the industry’s “larger . . . LECs” was reasonable in light of “their economies of scale” and “broad subscriber bases.”⁷ In addition, in the *USF/ICC Transformation Order*, the Commission heeded proposals to adopt “different transition periods by carrier type” as it shifted the industry toward bill-and-keep.⁸ The Commission also has addressed differences between carriers in setting compensation levels for providers of video relay services (“VRS”). In light of the greater operating efficiencies of large VRS providers, the Commission adopted a tiered rate structure that “reflects the financial situation of all providers” by compensating “smaller providers” with higher per-minute rates.⁹ The courts have also sanctioned this approach.¹⁰

⁵ See, e.g., *Access Charge Reform; Price Cap Performance Review for Local Exch. Carriers; Low-Volume Long-Distance Users*; Fed.-State Bd. On Universal Serv., 15 FCC Rcd. 12,962 ¶ 177 (2000) (“*CALLS Order*”), *reversed in part on other grounds sub nom. Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001); *USF/ICC Transformation Order* ¶¶ 799-802; *Telecomms. Relay Servs. & Speech-to-Speech Servs. for Individuals with Hearing & Speech Disabilities*, 22 FCC Rcd. 20,140 ¶ 52 (2007) (“*2007 VRS Order*”); *Telecomms. Relay Servs. & Speech-to-Speech Servs. for Individuals with Hearing & Speech Disabilities*, 25 FCC Rcd. 8689 ¶ 16 (2010) (“*2010 VRS Order*”), *aff’d Sorenson Commc’ns, Inc. v. FCC*, 659 F.3d 1035, 1050 (10th Cir. 2011).

⁶ *CALLS Order* ¶ 177.

⁷ *Id.*

⁸ *USF/ICC Transformation Order* ¶¶ 799-802.

⁹ *2007 VRS Order* ¶ 52 (2007); see also *2010 VRS Order* ¶ 17 (continuing tiered rate structure for video relay services reflecting differences in “carriers based on their size and volume”).

¹⁰ *Sorenson Commc’ns*, 659 F.3d at 1050 (Commission acted reasonably in compensating smaller providers of video relay services more than larger providers).

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As in these previous proceedings, the record in this proceeding supports the modified transitions proposed herein. In particular, the record demonstrates that flash cuts to BDS rates may have a greater impact on smaller ILECs given their increased dependence on BDS revenue streams, and that these carriers may need additional time to implement pricing reform proposals. Large ILECs, on the other hand, benefit enormously from economies of scale that allow them to “spread . . . costs over a large subscriber base”¹¹ and offer a greater variety of service offerings. As a result, the Commission can rationally moderate its implementation of necessary rate reductions as Frontier, Sprint, and Windstream propose.

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Though the signatories of this letter have not agreed on all aspects of BDS reform, the modified transitions proposed herein present a moderated path to the TDM proposals set forth by Verizon and INCOMPAS. We urge the Commission to implement the proposed TDM reform with the modified transition paths described herein.

Sincerely,

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¹¹ *CALLS Order* ¶ 177.