

October 14, 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,

On October 12, 2016, Charles McKee of Sprint Corporation and I met with Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel. On October 13, 2016, Charles McKee and I met with Claude Aiken, Legal Advisor to Commissioner Clyburn. In both meetings, we discussed items contained in the attached presentation.

Pursuant to the FCC's rules, I have filed a copy of this notice electronically in the above-referenced proceeding. If you require any additional information, please contact the undersigned.

Sincerely,



Paul Margie
Counsel for Sprint Corporation

cc: Travis Litman, Claude Aiken



Business Data Services

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The Record Demonstrates the Need for Immediate BDS Reform



- **Highly concentrated marketplace**
 - Monopoly in 77 percent of locations; duopoly at best in 99 percent of locations (Rysman)
 - ILECs capture 74 percent of revenue; HHI exceeds 5,000 in 99 percent of CBs (Besen/Mitchell)
- **Critical to industry, hospitals, schools, and wireless innovation**
 - “Every interaction — a Skype lecture in the classroom, a tablet using the library’s Wi-Fi, a desktop terminal at the nurse’s station — will at some point travel over pipelines owned by just a few companies who do not compete with one another” – John Windhausen, Jr., Executive Director, SHLB, July 11, 2016
 - Lack of BDS competition “doesn't just hurt the deployment of wireless networks today, it threatens as well to delay the buildout of 5G networks with its demand for many, many more backhaul connections to many, many more antennae” – Chairman Wheeler, June 20, 2016
- **Excessive rates cost billions per year in lost output and jobs**
 - High rates have cost the U.S. economy \$150 billion over the past 5 years
 - Lost spillover effects cost 132,000 jobs and \$14.5 billion in GDP annually

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Discussion Items



- TDM-based BDS at 45 Mbps or lower is non-competitive—the FCC therefore should:
 1. Correctly implement TDM rate adjustments
 2. Eliminate further delay in this proceeding
- If PBDS is to be addressed in a Second Further Notice the FCC should, at a minimum:
 3. Establish competitive backstop remedies now
 4. Craft the Second Further Notice to avoid another multi-year delay

Correctly Implement TDM Rate Adjustments



- Calculating the one-time correction and X-factor
 - Ensure the correction is calculated to cover the full time gap
 - Implement the one-time adjustment over two years—with a longer period for smaller carriers if needed
- The Verizon/INCOMPAS proposal's one-time adjustment and X-factor are consistent with best available data
 - The CACM methodology, adjusted to address ILEC criticisms, supports an X-factor of 4.3 percent and one-time reduction of 20.5 percent

Eliminate Further Delay in this Proceeding



- Delaying implementation beyond January 1, 2017 is unnecessary and would create real harm across the country
 - Every week of delay costs schools, employers, hospitals, and local governments millions of dollars
 - ILECs have demonstrated the ability to adjust rates quickly—there is no practical or legal rationale for delaying
 - Rapid implementation will accelerate IP transition
 - Sellers have been on notice of reforms for more than a decade

Eliminate Further Delay



- The FCC should not allow ILECs to delay relief for buyers that purchased BDS under pricing flex rules
 - Price flex areas are non-competitive
 - Price reductions should apply to contract tariffs now
- The FCC should not allow ILECs to flout the new rules by insisting on contract terms to block implementation
 - “Fresh look” needed for implementation—the order will result in no change for many schools, employers, and competitors
 - FCC should declare unenforceable any provision that prevents renegotiation of rates at compliant levels

Prevent ILECs From Gaming the Rules



- Do not let ILECs use accounting tricks to undermine the one-time reduction:
 - Order should clarify that reduction should not result in rate increases for any customer
 - Reductions should provide meaningful rate relief to all customer classes

Competitive Backstops – Wireless Discrimination



- The Order should emphasize explicitly that BDS practices that discriminate against wireless carriers violate Section 202(a) of the Act:
 - Charging higher rates for BDS at the same capacity and service level when used for backhaul violates the Act; and
 - Refusing to provide a service sold to other buyers to a wireless carrier customer violates the Act
- Order should do more than merely remind carriers of their Title II responsibilities—sellers are already aware of their common carrier obligations. Nevertheless, they charge much more for wireless backhaul than for building access

Competitive Backstops – Wholesale/Retail



- The FCC should not allow BDS providers to undermine competition by discriminating against wholesale buyers
 - Wholesale rates should be lower than retail because these offerings avoid costs incurred for retail service
 - Critical to preventing the continued elimination of competitive retail providers
- To prevent gaming, the rule should ensure that retail rates compared to wholesale rates reflect the rates actually paid by the customer, inclusive of credits and discounts

Competitive Backstops – Complaint Process



- The Order should time-limit the “expedited” BDS complaint procedure, including the mediation process
 - If the process follows standard Enforcement Bureau timelines, it will not provide real relief
 - Without a firm time limit, the mandatory staff-mediated pre-complaint process could add months of delay to dispute resolution
 - The Order should commit to the Bureau providing a recommended decision to the FCC within 60 days after a complaint is filed
- The Order should mandate that sellers provide specific rate information to correct a significant problem with today’s complaint process

Second Further Notice Should Seek Comment on Remedies for Non-Competitive PBDS



- The Second Further Notice should focus on remedies
 - Remedies should take into account uneven competition across different areas and services
 - The Further Notice should seek comment on specific proposals already submitted in the record:
 1. A competitive market test based on census blocks and actual connections
 2. A price cap system to constrain sellers' ability to charge supracompetitive rates
 3. A benchmark system based on TDM rates
 4. Mandatory reductions to existing rates



Sprint