

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Regulation of Business Data Services for	)	WC Docket No. 17-144
Rate-of-Return Local Exchange Carriers	)	

**REPLY COMMENTS OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these Reply Comments in response to comments filed regarding the Further Notice of Proposed Rulemaking released October 24 2018, in the above-captioned proceeding.<sup>2</sup> NTCA actively participated in earlier aspects of this proceeding, supporting adoption of a defined path to permit certain RLECs to elect price cap regulation of their special access services (also known as “Business Data Services” or “BDS”) and encouraging the Federal Communications Commission (the “Commission”) to apply the existing Competitive Market Test (“CMT”) to those RLECs that

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<sup>1</sup> NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

<sup>2</sup> *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers: Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 17-144, FCC 18-146, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking (rel. Oct. 24, 2018) (“FNPRM”).

make the election.<sup>3</sup> In October 2018, the Commission adopted rules allowing RLECs to “voluntarily elect to transition their ... BDS offerings out of rate-of-return regulation.”<sup>4</sup> At the same time, the Commission sought comment on whether to also allow RLECs to elect to transition their time division multiplex (“TDM”) transport element of their BDS offerings out of rate of return regulation.<sup>5</sup>

In response to the Commission’s request for comment, ITTA and USTelecom noted that the competitive characteristics of RLECs’ service areas warrant the same regulatory relief for TDM transport elements as applies to price cap carriers.<sup>6</sup> However, as ITTA/USTelecom highlight in their comments, the Commission’s FNPRM leaves RLECs wishing to elect price cap regulation for their transport elements in limbo. Specifically, the Commission neither extended RLECs’ ability to elect price cap regulation for their TDM transport services nor adopted a competitive market test that would allow RLECs to demonstrate sufficient competition exists in their market to warrant the ability to elect price cap regulation of their TDM transport services.<sup>7</sup> The Commission did, however, correctly recognize that instituting a large data collection requirement to allow rate of return carriers to demonstrate sufficient competition exists to permit them to elect incentive regulation of their TDM transport services would be burdensome on those

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<sup>3</sup> See Comments of NTCA – The Rural Broadband Ass’n, WC Docket No. 17-144 (July 6, 2017); Comments of NTCA – The Rural Broadband Ass’n, WC Docket No. 17-144 (June 18, 2018); NTCA Reply Comments, WC Docket No. 17-144 (July 2, 2018).

<sup>4</sup> FNPRM at ¶ 2.

<sup>5</sup> *Id.* at ¶ 5.

<sup>6</sup> Comments of ITTA/USTelecom, WC Docket No. 17-144 et al, at p. 3 (Feb. 8, 2019) (“ITTA/USTelecom Comments”).

<sup>7</sup> FNPRM at ¶ 157.

carriers.<sup>8</sup> Yet the Commission found that some data was needed to justify moving RLECs' TDM transport services to incentive regulation. Accordingly, NTCA supports ITTA/USTelecom's recommendation that the same policy considerations that the Commission found justified moving price cap carriers' TDM transport services to incentive regulation equally apply to RLECs' TDM transport services.

When evaluating whether to relieve price cap carriers from ex ante pricing regulation, the Commission conducted an extensive market analysis of price cap carriers' BDS markets, of which only 78 markets were served exclusively by RLECs. The Commission concluded based on this analysis that the markets were competitive. In the October 2018 Order that accompanied the FNPRM, the Commission adopted rules allowing RLECs to elect incentive regulation for their BDS services in markets deemed competitive based on the market analysis conducted for price cap carriers. The next logical step would be to use that same market analysis once again to allow RLECs to elect price cap regulation of their TDM transport services.

Respectfully submitted,

**NTCA–The Rural Broadband Association**



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<sup>8</sup> FNPRM at ¶ 162.