

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers)	WC Docket No. 17-144
)	
Business Data Services in an Internet Protocol Environment)	WC Docket No. 16-143
)	
Special Access for Price Cap Local Exchange Carriers)	WC Docket No. 05-25

REPLY COMMENTS OF FRONTIER COMMUNICATIONS

Frontier Communications Corporation (“Frontier”) hereby submits these reply comments in response to the *Second Further Notice of Proposed Rulemaking*¹ seeking comment on whether the Commission should reinstate its decision in the 2017 *Business Data Services Order*² eliminating *ex ante* pricing regulation of TDM transport services offered by price cap carriers. Frontier responds with an emphatic yes and urges the Commission to promptly reinstate its prior decision.

As an initial, and perhaps primary, matter the Eighth Circuit’s remand was on purely *procedural* grounds.³ As many commenters point out, this is in many ways the end of the

¹*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, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking*, FCC 18-146 (Oct. 24, 2018) (“*Second FNPRM*”).

²*Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, ¶ 1 (2017) (“*Business Data Services Order*”).

³ *Citizens Telecomms, Co. of Minn. v. FCC*, 901 F.3d 991, 1004-06 (8th Cir. 2018).

inquiry because the Commission’s substantive findings were not questioned by the court.⁴ Even the two commenters opposed to eliminating the regulation of TDM transport do not, because they cannot, dispute this.⁵ Thus, the Commission can, and should, reaffirm its 2017 findings on the existing record.

Indeed, as the majority of commenters recognize, the record in the *Business Data Services Order* amply supports the Commission’s findings.⁶ As the Commission found, “data shows that in all price cap territories, 92.1% of buildings served were within a half mile of competitive fiber transport facilities.”⁷ While that figure is compelling it is “conservative” given that it was based on data from 2013 and thus “necessarily understate the level of actual competition for transport services”⁸ It is particularly likely that this figure understates the level of competition given “that transport service represents the ‘low-hanging fruit’ of the business data services circuit, which makes it particularly attractive to new entrants.”⁹ Undoubtedly that number has continued to grow in the two years since the *Business Data*

⁴ See Comments of ITTA and USTelecom, WC Docket No. 17-144 at 6 (Feb. 8, 2019); Comments of Verizon, WC Docket No. 17-144 at 1 (Feb. 8, 2019); Comments of Alaska Communications, WC Docket No. 16-143 at 3 (Jan. 30, 2019); Comments of AT&T, WC Docket No. 17-144 at 2 (Feb. 8, 2019); Comments of CenturyLink, WC Docket No. 17-144 at 4 (Feb. 8, 2019).

⁵ See generally, Comments of INCOMPAS, WC Docket No. 16-143 (Feb. 8, 2019); Comments of Sprint Corporation, WC Docket No. 17-144 (Feb. 8, 2019).

⁶ See ITTA and USTelecom Comments at 5-6; Verizon Comments at 2-3; Alaska Communications Comments at 3; AT&T Comments at 7-10; CenturyLink Comments at 7-12.

⁷ *Business Data Services Order* ¶ 91.

⁸ *Id.*

⁹ *Id.* ¶ 82.

Services Order was released, further compelling the Commission to reaffirm its prior findings that “competition for TDM transport services is sufficiently pervasive at the local level to justify relief from pricing regulation nationwide.”¹⁰

The Commission recognized that its decision was not perfect as it might leave a small percentage of census blocks containing “an even smaller percentage of overall demand” deregulated “without the immediate prospect of competitive transport options.”¹¹ However, the regulation would cause “greater harm” in the form of “discouragement of competitive entry over time” than would deregulation.¹² Frontier agrees that this judgement is sound and regulating transport, particularly given the decreased regulation for channel terminations, would be “an administrative nightmare” for both “the Commission and regulated entities.”¹³ And continuing to impose *ex ante* price regulation on TDM transport will “prolong the technology transition that the Commission is otherwise trying to catalyze”¹⁴ by discouraging investment in new technologies.

¹⁰ *Id.*

¹¹ *Id.* ¶ 92.

¹² *Id.* ¶ 92.

¹³ AT&T Comments at 4-5. *See also* CenturyLink Comments at 13 (“ex ante regulation also would impose ‘an additional layer of regulatory complexity[,]’ undermining predictability and ultimately competitive entry and growth”) (quoting *Business Data Services Order* at ¶ 93).

¹⁴ Alaska Communications Comments at 5.

While the CLECs continue to assert that there is insufficient evidence of competition and a competitive market test is needed,¹⁵ the Commission correctly rejected these arguments in the *Business Data Services Order*.¹⁶ As the Commission found:

a competitive market test for transport would necessarily be more detailed and more burdensome since it would regulate based on the level of competition on individual routes. This significant additional complication does not appear warranted for a market that has seen considerable competitive investment and has been largely deregulated for much of the past 15 years under our current pricing flexibility rules.¹⁷

The CLECs offer no new reasons why the Commission should depart from these sound findings. INCOMPAS's position that the Commission did not have transport service data at a sufficiently "geographically granular level"¹⁸ is also unsupported by the record. In the *Business Data Services Order*, a main Commission finding as to both transport and channel terminations is that a CLEC can profitably buildout a fiber junction connecting an end user location to an interoffice transport facility if the end user is located within a half mile.¹⁹ The Eighth Circuit upheld the Commission's use of the half-mile benchmark as it relates to channel terminations,²⁰ essentially confirming the use of this metric for transport.

¹⁵ See generally, INCOMPAS Comments; Sprint Comments.

¹⁶ *Business Data Services Order* ¶ 93 n. 294.

¹⁷ *Id.*

¹⁸ INCOMPAS Comments at 3.

¹⁹ *Business Data Services Order* ¶¶ 41-43.

²⁰ *Citizens*, 901 F.3d at 1008-09.

Similarly, although INCOMPAS and Sprint contend that the Commission should measure whether there is fiber transport in each end office instead of to overall buildings,²¹ the building analysis is in many ways a more rigorous test and otherwise fully encapsulates the test INCOMPAS and Sprint suggest. As the Commission found, 92.1% of buildings with demand for business data services are within a half mile of competitive fiber transport facilities.²² End offices themselves are usually located in the most central (and thus dense and populous) part of a wirecenter area, and of course the end offices themselves are buildings with demand for business data services. Given the determination, upheld by the Eighth Circuit, that competitors will connect to buildings within a half mile of their facilities, competitors certainly will be willing to extend facilities the half a mile to the buildings where demand is aggregated.²³ Indeed, the half-mile metric is likely very conservative because it was established related to buildings rather than end offices, which have much greater demand – a statistic of several miles would be a better measure. Sprint and INCOMPAS do not seriously contend that less than 92% of transport purchased is subject to competition.

²¹ INCOMPAS Comments at 8; Sprint Comments at 5-6.

²² *Business Data Services Order* ¶ 91.

²³ *Business Data Services Order* ¶¶ 41-43.

At bottom, there is simply no reason why the Commission, having cured the insufficient notice, should depart from its prior findings. Frontier urges the Commission to confirm its prior findings that TDM transport special access services for price cap carriers are sufficiently competitive nationwide to justify eliminating *ex ante* pricing regulation and forbearing from tariff requirements for those services.

Respectfully submitted,

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