

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter 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 VERIZON

William H. Johnson
Of Counsel

Katharine R. Saunders
Roy E. Litland
VERIZON
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005
(202) 515-2462

Evan T. Leo
KELLOGG, HANSEN, TODD, FIGEL
& FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7930

Counsel for Verizon

March 11, 2019

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The Commission should reaffirm its findings that TDM transport services for price-cap LECs are sufficiently competitive in all areas to justify eliminating ex ante pricing regulation and tariff requirements for those services. The Commission's prior findings are supported by an extensive factual record. The commenters who urge the Commission to reverse its prior conclusions and reinstate ex ante regulation of TDM transport fail to provide new evidence or any other basis that would justify the radical about-face they urge. Rather, these commenters merely repeat the same facts and arguments that the Commission and the Eighth Circuit previously found wanting. These arguments should be rejected again. Reversing course at this juncture would upset industry expectations, disrupt carriers and their customers, and strain the overall business data services regulatory framework.

I. The Existing Factual Record Justifies Reaffirming the Commission's Prior Conclusions Regarding TDM Transport

As Verizon and other commenters have shown, the Commission developed an extensive factual record in the prior proceeding, and this record was sufficient to support the Commission's findings that TDM transport services faced "substantial competition" given "widespread deployment of competitive transport networks" as well as other factors.¹ Verizon further explained that, under established precedent, it would require an extraordinary change in factual circumstances to justify a departure or reversal from the Commission's prior conclusions.² None

¹ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, WC Docket Nos. 17-144, 16-143 & 05-25, FCC 18-146, ¶ 151 (rel. Oct. 24, 2018). See Verizon at 2-3; AT&T at 2-5, 7-8; CenturyLink at 8; ITTA and USTelecom at 11-12; Alaska Communications at 2-5.

² See Verizon at 3 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-516 (2009) (when an agency reverses itself, it "must show that there are good reasons for the new policy"; "the agency need not always provide a more detailed justification than what would suffice for a

of the commenters seeking to retain ex ante regulation of TDM transports services makes such a showing.

INCOMPAS and Sprint instead largely repeat the arguments about TDM transport competition they previously made before the Commission and in their appeal before the Eighth Circuit.³ But the Commission rejected these arguments, and the Court found no fault with the Commission's substantive analysis.⁴ The Commission need not revisit these same claims here, but should only consider whether new information confirms or conflicts with its prior conclusions. INCOMPAS and Sprint fail to provide any such new evidence. They instead urge the FCC to develop a new framework for analyzing TDM transport competition, and to collect new data to support that new analysis.⁵ The Commission is not required to do so, but instead can and should rely on the existing record and framework, which demonstrates that eliminating ex ante regulation of TDM transport services is warranted.

Sprint attempts to manufacture a basis for the Commission to reopen and reverse its prior determinations, claiming that it has experienced increased prices for TDM transport services following the removal of ex ante price regulation.⁶ But even accepting Sprint's claim at face value, increased prices do not prove that competition is insufficient to restrain prices or that the Commission's past predictions are wrong. As the Commission has previously acknowledged,

new policy created on a blank slate," however, "[s]ometimes it must – when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account") (citation omitted); *see also Air All. Houston v. EPA*, 906 F.3d 1049, 1066 (D.C. Cir. 2018)).

³ *See, e.g.*, INCOMPAS at 5-13; Sprint at 2-9.

⁴ *Citizens Telecomms, Co. of Minn. v. FCC*, 901 F.3d 991, 1006-1011 (8th Cir. 2018).

⁵ *See, e.g.*, INCOMPAS at 14-16.

⁶ *See* Sprint at 8.

once ex ante pricing regulation is removed, it is to be expected that prices may rise, because ex ante pricing regulation may keep prices not at, but below, the levels that would be expected in competitive market.⁷ Sprint has failed to show that any price increases it has experienced are somehow inconsistent with competitive levels or that they are otherwise unjust and unreasonable.

II. There Are Additional Compelling Reasons for the Commission to Reaffirm Its Conclusions with Respect to Transport

Verizon previously demonstrated that not only do the facts and law support the Commission reaffirming its decision to eliminate ex ante pricing regulation of TDM-based transport services, but there are also additional compelling reasons for the Commission to retain this approach. First, reinstating ex ante regulation of TDM transport services would upset the expectations of both suppliers and purchasers of business data services transport.⁸ Verizon and other industry participants have already made significant and costly changes to billing systems and tariffs in reliance on the Commission's decision,⁹ and it would take months of effort to

⁷ See, e.g., *Access Charge Reform; Price Cap Reform for Local Exchange Carriers*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, ¶ 155 (1999), *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001) (“We recognize that the regulatory relief we grant . . . may enable incumbent LECs to increase access rates for some customers. We conclude that this relief nonetheless is warranted upon a Phase II showing for two reasons. First, some access rate increases may be warranted, because our rules may have required incumbent LECs to price access services below cost in certain areas.”).

⁸ *FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009) (an agency faces a higher burden of proof for a change in policy “when its prior policy has engendered serious reliance interests that must be taken into account.”).

⁹ See, e.g., Response of ILEC Intervenors in Support of FCC Motion to Stay the Mandate, *Citizens Telecomms. Co. of Minn., LLC v. FCC*, Nos. 17-2296, 17-2342, 17-2344 & 17-2685, at 2 (8th Cir. filed Oct. 22, 2018) (Intervenors USTelecom, AT&T, and CenturyLink stated that “carriers have made many changes in reliance on the 2017 rules – for example, by transitioning transport services from intricately regulated tariffed offerings to negotiated contracts that often also include negotiated terms and conditions for other services.”).

dismantle these changes. Tellingly, INCOMPAS and Sprint do not address these facts, much less demonstrate why the benefits of reinstating ex ante regulation outweigh the costs.

Second, re-imposing ex ante regulation of transport services would conflict with the overall business data services regulatory framework by subjecting transport services to greater regulation than end-user channel terminations, despite the Commission's prior findings that transport services were even more likely to be competitive.¹⁰ INCOMPAS and Sprint also have no answer for this point. They argue that transport requires interconnection at central offices, and that the record evidence that justified the elimination of ex ante regulation for channel terminations does not apply to transport, because it looks at whether competitive fiber is close to end-user locations with BDS demand, not whether such fiber is close to central offices.¹¹ As AT&T shows, however, this argument fails for multiple reasons.¹² It ignores that much competitive transport bypasses ILEC central offices today, making distance of competitive transport to ILEC central offices largely irrelevant.¹³ It also ignores the record evidence, which shows competitive transport already is deployed nearby all or most central offices, and can readily be extended to serve any remaining central offices, just as the Commission found was possible with respect to end-user locations.¹⁴

¹⁰ See *Business Data Services Order* ¶¶ 77, 82.

¹¹ See, e.g., INCOMPAS at 5-6; Sprint at 3-4.

¹² AT&T at 16-18.

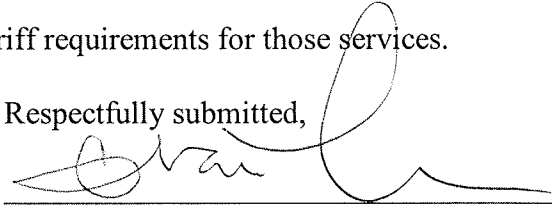
¹³ *Id.* at 16-17.

¹⁴ *Id.* at 18.

CONCLUSION

For all these reasons, the Commission should confirm its prior findings that TDM transport services for price-cap LECs are sufficiently competitive in all areas to justify eliminating ex ante pricing regulation and tariff requirements for those services.

Respectfully submitted,



William H. Johnson
Of Counsel

Katharine R. Saunders
Roy E. Litland
VERIZON
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005
(202) 515-2462

Evan T. Leo
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