

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 CENTURYLINK

CenturyLink, Inc.¹ hereby files these reply comments on the Commission’s proposal to continue to forbear from ex ante pricing regulation of price cap carriers’ TDM transport business data services (BDS).²

The initial comments raised no issues that should cause the Commission to depart from its well-reasoned and factually grounded proposal. Only two parties, Sprint and INCOMPAS, oppose this proposal, and both generally just recite arguments that the Commission considered and rejected in the *BDS Order*. These parties appear to have forgotten that the Eighth Circuit

¹ This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

² See *Business Data Services in an Internet Protocol Environment*, WC Docket Nos. 16-143, *et al.*, Report and Order, 32 FCC Rcd 3459, 3500-02 ¶¶ 90-92 (2017) (*BDS Order*), *remanded in part sub nom., Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991 (2018), *mandate stayed until* Nov. 12, 2019 (Order, 8th Cir. Nov. 9, 2018) (Nos. 17-2296 *et al.*) (*Stay Order*). See also *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket Nos. 17-144, *et al.*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, FCC 18-146, at ¶ 147 & n. 369 (rel. Oct. 24, 2018); 83 Fed. Reg. 61358 (Nov. 29, 2018); Erratum, WC Docket Nos. 17-144 *et al.* (rel. Dec. 11, 2018) (*Notice*).

denied all the CLECs' substantive challenges to the *BDS Order* and remanded that order solely to cure a single procedural error, as the Commission has now done by providing notice and opportunity to comment.

Given that court decision, the Commission's key findings in the *BDS Order* are on even firmer ground today, thus requiring an extraordinary change in circumstances to justify a departure from the TDM transport rule adopted in the *BDS Order*.³ No such change has occurred. Rather, the trends that caused the Commission to move away from ex ante pricing and tariff regulation in the *BDS Order* have only accelerated. Cable companies have continued to invest heavily in BDS services and have been rewarded with steadily increasing BDS revenues and market share.⁴ Concurrently, demand for ILECs' legacy BDS, including TDM transport, has continued to slide as customers shift to IP-based BDS and dark fiber, most often purchased from non-ILEC providers.⁵

CenturyLink continues to view cable operators as its primary competitors for BDS, including TDM transport services, due to their massive footprints and aggressive marketing and pricing of these services. Cable operators also are ideally situated for 5G deployment, as their fiber and hybrid-fiber coax infrastructures can be used to backhaul traffic to and from the millions of small cell antennas that will ultimately be needed for 5G.⁶ The backhaul facilities

³ Comments of AT&T, filed herein on Feb. 8, 2019, at 10 (AT&T Comments); Comments of Verizon, filed herein on Feb. 8, 2019, at 3.

⁴ Comments of CenturyLink, filed herein on Feb. 8, 2019, at 8-12 (CenturyLink Comments); AT&T Comments at 8-9.

⁵ CenturyLink Comments at 12.

⁶ Jeff Baumgartner, *Need to Know: Cable Is Wired for 5G; For Operators 5G Offers Big Opportunities for New Fixed and Mobile Wireless Services*, Multichannel News (Jun. 4, 2018), <https://www.multichannel.com/needtoknow/need-to-know-cable-is-wired-for-5g> ("HFC 'is an excellent vehicle for [5G] because it provides power, right of way and backhaul for all of that

used to feed these small cells will be located at 1,000 feet intervals in urban areas and therefore also can then be used to serve nearby business locations,⁷ independent of the ILECs' transport networks.

Of course, cable operators are not the only providers deploying fiber for wireless backhaul. T-Mobile recently announced that it has agreements with 52 fiber providers for the backhaul necessary for its fiber deployment, including with infrastructure providers such as Crown Castle.⁸ Zayo announced last year that it had expanded an existing relationship with a national wireless provider to deploy backhaul to thousands of macro towers in 30 cities, with other agreements addressing the wireless provider's small cell needs.⁹ Such opportunities are also drawing successful bids from regional providers to provide wireless backhaul services. And wireless providers themselves are investing heavily in fiber deployments. Verizon, for example, is a "top five fiber provider in 16 markets outside its ILEC footprint,"¹⁰ and recently announced

small-cell radio equipment,' [according to] Craig Cowden, vice president of wireless technology at Charter Communications.")

⁷ Bernie Arnason, *Verizon: We're Doubling Down on Fiber Broadband, Just Don't Call It Fios*, Telecompetitor (Jun. 13, 2017), <https://www.telecompetitor.com/verizon-were-doubling-down-on-fiber-broadband-just-dont-call-it-fios/>.

⁸ Mike Dano, *T-Mobile Lines Up More Small Cells and Fiber Backhaul for 5G*, Fierce Wireless (Sept. 14, 2018), <https://www.fiercewireless.com/5g/t-mobile-lines-up-more-small-cells-and-fiber-backhaul-for-5g>.

⁹ Zayo Group, *Wireless Carrier Selects Zayo for Significant National Expansion*, Press Release (Apr. 2, 2018), <https://www.zayo.com/news/wireless-carrier-selects-zayo-significant-national-expansion/>.

¹⁰ Kendra Chamberlain, *Verizon Is a 'Fiber Giant' for 5G, Report Says*, Fierce Wireless (Aug. 8, 2018), <https://www.fiercewireless.com/tech/verizon-a-fiber-giant-for-5g>.

that its “One Fiber program . . . is rolling out in more than 60 cities across the U.S., with more than 25,000 Verizon-owned fiber miles expected to be deployed by year-end.”¹¹

Even “Facebook is getting into the fiber transport business.”¹² Facebook has long built its own fiber network links, in addition to leasing facilities and services, to connect its large and growing number of data centers. Earlier this month, the company announced its launch of a subsidiary, Middle Mile Infrastructure, to act as a wholesale carrier offering excess capacity on its transport network to third parties, including local and regional providers.¹³ According to Facebook, the subsidiary will serve “existing and emerging providers, helping them extend service to many parts of the country, and particularly in underserved rural areas near our long-haul fiber builds.”¹⁴

Each of these competitive offerings provides a facilities-based alternative to price cap carriers’ transport services, including TDM transport services, thus validating the Commission’s conclusion in the *BDS Order* that there is robust competition to price cap carriers’ TDM transport services. No new analysis or data are needed to justify continued forbearance from price cap and tariff regulation of price cap carriers’ TDM transport. Indeed, by 2013 and without fully accounting for cable companies’ BDS deployment,¹⁵ virtually all (*i.e.*, 92.1%) buildings

¹¹ Verizon, *Verizon Outlines 5G-Era Growth Strategy at Investor Conference*, Press Release (Feb. 21, 2019), https://www.verizon.com/about/news/verizon-outlines-5g-era-growth-strategy-investor-conference?cid=oso_livz_topicc&bid=3138.

¹² Carl Weinschenk, *Facebook’s Middle Mile Infrastructure Subsidiary to Offer Fiber Transport, Eyes Underserved Markets*, Telecompetitor (Mar. 6, 2019), <https://www.telecompetitor.com/facebook-middle-mile-infrastructure-subsidiary-to-offer-fiber-transport-eyes-underserved-markets/>.

¹³ *Id.*

¹⁴ Facebook, *Building Backbone Network Infrastructure* (Mar. 2, 2019), <https://code.fb.com/connectivity/fiber-optic-cable/>.

¹⁵ CenturyLink Comments at 2, 8; *and see also id.* at 4.

with BDS demand in price cap areas were within a half mile of competitive transport facilities—the distance to which the Commission found that competitors could profitably build fiber to add customers to their networks.¹⁶ And 89.6% of census blocks with BDS demand had at least one served building within a half mile of CLEC fiber.¹⁷ These facts, along with the other findings and analysis in the *BDS Order*, fully support the nationwide forbearance the Commission adopted in that order and proposes to maintain on remand.

In response, the CLECs claim, once again, that these undisputed facts are “entirely irrelevant” to the determination whether ex ante pricing regulation of price cap carriers’ TDM transport services is needed.¹⁸ According to this myopic view, the relevant geographic market for ILEC transport is limited to the given route between ILEC end offices.¹⁹ Thus, unless it is shown that a competitor has replicated that ILEC route by collocating facilities in each of those end offices, ILEC transport cannot be deemed competitive in the areas served by those end offices.²⁰ But, as the Commission well knows, the CLECs made very similar arguments prior to the *BDS Order*, asserting that “the distance between a customer location and a transport connection is entirely irrelevant to the question of whether that customer has access to competitive transport facilities[,]” and that an ILEC retains market power over transport to and from an end office, “unless a competitive provider has collocated in that specific ILEC end office

¹⁶ *BDS Order*, 32 FCC Rcd at 3501 ¶ 91.

¹⁷ *Id.*

¹⁸ Comments of INCOMPAS, filed in WC Dockets Nos. 16-143 and 05-25 on Feb. 8, 2019, at 8 (INCOMPAS Comments).

¹⁹ *Id.* at 15.

²⁰ Comments of Sprint Corporation, filed herein on Feb. 8, 2019, at 3, 5-6; INCOMPAS Comments at 7-13.

and that competitor can obtain a cross-connect to connect its collocated equipment to the ILEC channel termination.”²¹

The Commission rejected this theory in the *BDS Order*,²² and it should do the same here. If competitive transport extends to within a half mile of a customer location with BDS demand, and therefore can be profitably extended to fulfill that demand,²³ there is no need to connect to the ILEC’s end office to serve that customer. Instead, the competitor can bypass the ILEC’s network altogether.²⁴ This is just how cable companies and other facilities-based providers have won thousands of BDS customers from their price cap carrier competitors.²⁵ Thus, the fact that more than 92% of buildings in price cap areas with BDS demand are within a half mile of competitive fiber is not only relevant, but direct and compelling evidence that ex ante pricing regulation of price cap carriers’ TDM transport services is unnecessary.

Moreover, since central offices are located in buildings, this data point also confirms that a high percentage of price cap carriers’ central offices fall within the *BDS Order*’s half mile threshold for a profitable competitive build.²⁶ By definition, central offices serve as aggregation points.²⁷ Thus, if a CLEC chooses to purchase channel terminations from an ILEC, whether in a

²¹ Letter from John T. Nakahata, et al., Counsel for Windstream, and Christopher J. Wright, et al., Counsel for Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, at 17-18 (footnote omitted) (Apr. 13, 2017).

²² *BDS Order*, 32 FCC Rcd at 3497 ¶ 81 n.273.

²³ *Id.*, 32 FCC Rcd at 3482 ¶ 45.

²⁴ *Id.*, 32 FCC Rcd at 3497 ¶ 81 n.273.

²⁵ *See id.*, 32 FCC Rcd at 3484-85 ¶ 54 (“once providers have sunk substantial costs into a network, it is in their interest to build laterals to as many customers as possible because the relative cost of a lateral is much lower than the cost of other network facilities.”)

²⁶ AT&T Comments at 5.

²⁷ *See BDS Order*, 32 FCC Rcd at 3498 ¶ 82.

“competitive” or “noncompetitive” county, the demand from the ILEC central office serving those channel terminations will be concentrated, enabling a CLEC to justify building facilities to that central office in any area with meaningful BDS demand. The CLEC can also use carrier-neutral facilities, such as carrier hotels and data centers, for network interconnection to accept transport traffic.²⁸

In counties found “noncompetitive” with respect to channel terminations, price cap carriers will be required to continue to provide those channel terminations via tariff at price cap rates. Thus, removing price cap regulation of transport in these areas will not allow ILECs to circumvent remaining price cap regulation of ILEC channel terminations. Forbearance from price cap regulation of TDM transport in these areas also reflects the balance the Commission struck in the *BDS Order* between the risks of under- and overregulation. There, the Commission determined that the risk of overregulation of price cap carriers’ TDM transport services would outweigh any marginal benefit from extending monopoly-era price cap and tariff regulations, by artificially tamping down TDM transport rates, thereby deterring competitive entry and slowing the IP migration.²⁹ Such ex ante regulation also would impose “an additional layer of regulatory complexity[,]” undermining predictability and ultimately competitive entry and growth.³⁰ The Commission thus reasonably concluded that retaining tariff and price cap regulation of price cap carriers’ TDM transport services in any geographic area was unnecessary and would be counterproductive.

²⁸ *BDS Order*, 32 FCC Rcd at 3497 ¶ 81 n.273.

²⁹ *Id.*, 32 FCC Rcd at 3501-02 ¶¶ 92-93.

³⁰ *Id.*, 32 FCC Rcd at 3502 ¶ 93.

The Commission also acknowledged in the *BDS Order* that price cap carriers face declining utilization and rising per-unit costs for facilities used to provide legacy TDM services, including DS1s and DS3s, due to the potential loss of scale economies. As the Commission noted, “[t]his declining utilization of DS_n-specific plant means that providers must amortize shared costs among fewer customers (i.e., unit costs are likely rising).”³¹ The Commission therefore concluded that, “for DS1 and DS3 services generally, price cap LECs’ operating expenses may have fallen at a much slower rate than the demand for their services, causing their average cost of providing DS_n services to steadily climb.”³² These trends, along with many years of X-factor reductions have left many DS1 and DS3 rates formerly subject to price caps below cost.

The *BDS Order*’s partial elimination of price cap regulation of DS1 and DS3 services enabled price cap carriers to adjust their rates for these services to reflect today’s cost of providing them. Any resulting increases do not reflect the existence of market power for these services. As the Commission found in the *BDS Order*, customers unhappy with their DS1 or DS3 rates can and do readily migrate to Ethernet and other services available from a long list of providers, thereby disciplining those ILEC rates.³³

³¹ *BDS Order*, 32 FCC Rcd at 3554-55 ¶ 229 (citation omitted).

³² *Id.* (citation omitted).

³³ *Id.*, 32 FCC Rcd at 3471-72 ¶¶ 25-26.

CONCLUSION

For all these reasons, the Commission should adopt its proposal to not impose ex ante pricing regulation on price cap carriers' TDM transport services.

Respectfully submitted,

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