



May 9, 2019

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers; Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*; WC Docket Nos. 16-143, 05-25 & 17-144.

Dear Ms. Dortch:

Pursuant to the protective orders governing submissions in the business data services proceedings, Sprint Corporation (“Sprint”) hereby submits a redacted version of comments filed in response to the Commission’s April 15, 2019 Public Notice.¹

The unredacted comments contain highly confidential information protected under the following protective orders adopted by the Commission:

- *Modified Protective Order*² in WC Docket No. 05-25, RM-10593
- *Second Protective Order*³ in WC Docket No. 05-25, RM-10593
- *Data Collection Protective Order*⁴ in WC Docket No. 05-25, RM-10593

¹ See *Wireline Competition Bureau Seeks Focused Additional Comment in Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, Public Notice, DA 19-281 (Wireline Comp. Bur. rel. Apr. 15, 2019).

² See *Special Access Rates for Price Cap Local Exchange Carriers*, Modified Protective Order, DA 10-2075, 25 FCC Rcd. 15,168 (Wireline Comp. Bur. 2010).

³ See *Special Access Rates for Price Cap Local Exchange Carriers*, Second Protective Order, DA 10-2419, 25 FCC Rcd. 17,725 (Wireline Comp. Bur. 2010) (“*Second Protective Order*”).

⁴ See *Special Access for Price Cap Local Exchange Carriers et al.*, Order and Data Collection Protective Order, DA 14-1424, 29 FCC Rcd. 11,657 (Wireline Comp. Bur. 2014) (“*Data Collection Protective Order*”).

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- *Business Data Services Data Collection Protective Order*⁵ in WC Docket No. 05-25, RM-10593.⁶

Highly confidential treatment of the designated portions of the unredacted document is required to protect information regarding the “locations that companies serve with last-mile facilities,”⁷ and “[p]ricing . . . information” for business data services.⁸ The designated information is not available from public sources, and, “if released to competitors, would allow those competitors to gain a significant advantage in the marketplace.”⁹

Consistent with the procedures specified in the protective orders and the *Second Further Notice and Further Notice*, Sprint is also submitting an original and copy of the unredacted version for filing in WC Docket No. 16-143, and two additional copies of the unredacted version for filing in WC Docket No. 05-25.

Please contact me if you have any questions or require any additional information.

Sincerely,



Shiva Goel

Counsel to Sprint Corporation

⁵ See *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans et al.*, Order and Protective Orders, DA 15-1387, 30 FCC Rcd. 13,680, App. A (Wireline Comp. Bur. 2015).

⁶ See also *Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143, 15-247, and 05-25, RM-10593, Order, 31 FCC Rcd. 7104 (Wireline Comp. Bur. 2016) (extending “the procedures for submitting and accessing Confidential Information adopted in the” protective orders specified above “to Confidential Information filed in the record in WC Docket No. 16-143”).

⁷ *Second Protective Order* ¶ 6.

⁸ Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, DA 12-199, 27 FCC Rcd. 1545, 1548 (Feb. 13, 2012) (supplementing the *Second Protective Order*) (“*Second Supplement to Second Protective Order*”).

⁹ *Second Protective Order* ¶ 3; *Second Supplement to Second Protective Order* at 1546; *Data Collection Protective Order* ¶ 5.

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

In the Matter of

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

Regulation of Business Data Services for Rate-of-Return Local
Exchange Carriers

WC Docket No. 17-144

COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”) agrees that the Commission should examine local competition before considering any further deregulation of DS1 and DS3 interoffice transport services. The *April Data Tables*, however, do not advance this goal.¹ Instead of testing for the availability of alternatives to interoffice transport sold by the incumbent local exchange carrier (“ILEC”), the Commission’s new data tries and fails to measure just one of many variables that drive network expansion decisions. The result is an incomplete and inaccurate assessment of competition that provides no support for the Commission’s proposal to deregulate DS1 and DS3 interoffice transport nationwide. Indeed, even assuming the data tested for competition in a reasonable manner, it would show that there is no semblance of competition—actual, potential, or “medium-term”—in many parts of the country.

As the Commission evaluates its pending transport proposals, it should also acknowledge that the competitive market test established under the *2017 BDS Order* has failed.²

¹ See *Wireline Competition Bureau Seeks Focused Additional Comment in Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, Public Notice, DA 19-281 (Wireline Comp. Bur. rel. Apr. 15, 2019) (seeking comment on the *April Data Tables*, which report “the distances from competitive provider fiber to [ILEC] wire centers and end user buildings with BDS demand in price cap areas”).

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

Unconstrained by price caps, ILECs continue to raise rates for DS1 and DS3 business data services (“BDS”) by exorbitant amounts despite the Commission’s finding that robust competition would ensure just and reasonable pricing. There is no way to rationalize the ILECs’ ability to raise rates in both newly deregulated and price flex areas, for both channel terminations and interoffice transport, with the ILECs’ continued claims of ubiquitous low-bandwidth competition.

I. THE PRESENCE OF FIBER WITHIN A HALF MILE OF A WIRE CENTER PROVIDES NO INFORMATION ABOUT INTEROFFICE TRANSPORT COMPETITION.

As Sprint explained in its comments to the *Second Further Notice*, record evidence submitted by both ILECs and competitive local exchange carriers (“CLECs”) demonstrates that buyers of ILEC channel terminations must also buy ILEC interoffice transport in order to complete a BDS circuit.³ These purchasing carriers frequently lack facilities collocated at the serving ILEC end office, and thus require transport to another ILEC end office where they can accept the traffic.⁴ Non-incumbents generally do not charge separately to carry BDS traffic to a point of interconnection. But ILECs typically do, at least for DS1s and DS3s, and the Commission’s rules likewise apply price caps separately to each ILEC rate element. Accordingly, a central question before the Commission is where and to what extent competitive alternatives are sufficient to constrain ILEC rates for the interoffice transport rate element of a

³ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd. 10,403 (2018) (“*Second Further Notice*”); Comments of Sprint Corporation at 4-8, WC Docket Nos. 16-143 et al. (filed Feb. 8, 2019) (“Sprint Transport Comments”).

⁴ See Sprint Transport Comments at 3; Comments of INCOMPAS at 10-11, WC Docket Nos. 16-143 et al. (filed Feb. 8, 2019) (“INCOMPAS Transport Comments”).

DS1 and DS3 circuit.

In answering that question, the Commission must account for the function of DS1 and DS3 interoffice transport facilities and their role in wireline network architecture. Thus, Sprint urged the Commission not to rely on data referenced in the *Second Further Notice* measuring the number of providers with fiber in an MSA and the percentage of buildings located within a half-mile of fiber.⁵ Sprint explained that the mere presence of fiber in the ground near the end user—or a few counties over in another part of an MSA—indicates virtually nothing about the presence and extent of transport competition, because a competitive provider must be “collocated at the end office serving the end user and must feasibly interconnect with the purchasing carrier’s network” in order to provide an alternative to ILEC interoffice transport.⁶

The *April Data Tables* fare no better than the data referenced in the *Second Further Notice* in their effort to test for interoffice transport competition. The primary dataset contained in the *April Data Tables* contains the distances between each ILEC wire center and fiber reported by any competitive provider (“Reporting Carrier”) within a half mile. Like the statistics in the *Second Further Notice*, these distances are virtually nonresponsive to the question before the Commission.

As an initial matter, the reported distances focus quite literally on only one end of the transport competition equation. To provide an alternative to interoffice transport, a Reporting Carrier must carry traffic from the serving wire center to a point of interconnection with the purchasing carrier. Depending on the reach of its network and that of its potential customer, the Reporting Carrier may need to construct facilities not just to collocate with the ILEC at the

⁵ Sprint Transport Comments at 3.

⁶ *Id.*

serving wire center, but also to interface with the purchasing carrier at the other endpoint of the transport connection. Yet the *April Data Tables* do not test whether construction at the other endpoint will be necessary, and, if so, what might be required to complete it. There is no reasonable explanation for this critical omission. Indeed, the nearest point of interconnection might well be at another ILEC end office, which can be located several miles apart or more.

The *April Data Tables* also fail to provide any information about the demand that would be available if the Reporting Carrier were to engage in the capital-intensive effort of constructing new facilities. As the Commission itself recognized, demand from non-incumbent services must be sufficiently concentrated to ensure that the “expected revenue derived from the sale” of a “relatively high-capacity inter-office transport facility” justifies the cost of construction.⁷ The Commission cannot simply assume that these revenue hurdles will be met at every wire center, especially in counties deemed non-competitive under the *2017 BDS Order*. Indeed, the *2017 BDS Order*’s assumption that competitors are willing to build out a half-mile to capture all revenue associated with a low-bandwidth circuit was already fanciful.⁸ There is nothing in the record to support the even more extreme view that a competitor will construct a new, high-capacity transport facility to capture the smaller amount of revenue associated with transport for a handful of DS1s and DS3s, which may be all that is available in rural areas and suburbs.⁹

Compounding these problems is the fact that the *April Data Tables* incorrectly measure

⁷ See *2017 BDS Order* ¶ 82.

⁸ See Letter from Paul Margie, Counsel, Sprint Corporation, and John T. Nakahata, Counsel, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC at 8-9, WC Docket Nos. 16-143 et al. (filed Apr. 17, 2017) (“Sprint-Windstream April 17, 2017 Ex Parte”).

⁹ See INCOMPAS Transport Comments at 10-11; Letter from Paul Margie, Counsel, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC at 4, WC Docket Nos. 16-143 et al. (filed Nov. 9, 2016) (“Sprint November 9, 2016 Ex Parte”).

the distance to the serving wire center. The record demonstrates that CLEC networks are built to permit the extension of facilities from designated splice or access points.¹⁰ They are not built to permit the extension of facilities from any point along the fiber network. Yet the *April Data Tables* do not measure distances from splice points, access points, or even connections, which at the very least might indicate that a splice or access point might be nearby. This approach is wildly inconsistent with the portions of the *2017 BDS Order* to which the Eighth Circuit deferred, where the Commission evaluated competition based on the proximity of end users to actual CLEC connections rather than mere fiber in the ground.¹¹

The *April Data Tables* also fail to examine whether the operator of the nearby fiber network is even in the business of collocating with ILECs to sell transport. The data reports distances to fiber from any competitive provider—including cable companies. But as AT&T explained previously in this proceeding, “cable companies generally do not rely on ILEC collocations at all.”¹² Likewise, the cable industry’s own service descriptions make clear that the “competitive transport” provided by cable companies typically terminates at the end-user premises, even when sold to other carriers on a wholesale basis.¹³ Indeed, for that very reason, Sprint **[BEGIN HIGHLY CONFIDENTIAL]**

¹⁰ See, e.g., Reply Comments of INCOMPAS at 3-4, WC Docket Nos. 05-25 et al. (filed Feb. 19, 2016); Reply Comments of TDS Metrocom at 13-15, WC Docket Nos. 05-25 et al. (filed Feb. 19, 2016).

¹¹ See *2017 BDS Order* ¶ 132.

¹² Comments of AT&T Inc. at 9, WC Docket Nos. 05-25 et al. (filed Jan. 27, 2016).

¹³ See Comments of Comcast Corporation at 10, WC Docket Nos. 05-25 et al. (filed June 28, 2016) (explaining that Ethernet transport services provide retail “point-to-point connectivity between or among multiple business locations” and data centers, wholesale “connections to networks operated by other service providers” pursuant to “ENNI” arrangements, and wireless backhaul); see also *id.* at 14-15 (clarifying that ENNI agreements permit wholesale purchases of connectivity to end user locations within the Comcast footprint).

[END HIGHLY CONFIDENTIAL]. Thus, in

light of the cable industry's approach to network planning, the Commission cannot assume that cable companies will extend facilities to serving wire centers and provide an alternative to ILEC interoffice transport.

II. THE *APRIL DATA TABLES* DO NOT SUPPORT NATIONWIDE TRANSPORT DEREGULATION IN ANY EVENT.

Even before staff prepared the *April Data Tables*, the record in this proceeding demonstrated a clear need to evaluate competitive conditions for interoffice transport with some semblance of geographic precision. For example, the record showed that competitive transport options “fall[] off dramatically” when at least one end point of the required transport facility is located in rural or suburban America.¹⁴ It also demonstrated that, in denser areas, purchasing carriers may not buy enough DS1s and DS3s to take advantage of a high-capacity competitive transport facility.¹⁵ Perhaps unsurprisingly, even AT&T has acknowledged that there are “areas where there are no realistic transport alternatives and where it would be prohibitively expensive to deploy them.”¹⁶ For that very reason, AT&T also urged the Commission to conduct a competitive market test for DS1 and DS3 transport sold in rate-of-return areas where it is a net buyer of ILEC transport.¹⁷

¹⁴ See Declaration of Michael Chambless ¶ 10, attached to Comments of XO Communications, LLC, WC Docket Nos. 05-25 et al. (filed Jan. 27, 2016). See also Sprint-Windstream April 17, 2017 Ex Parte at 8-9; Letter from Matt Nodine, Assistant Vice President, Federal Regulatory, AT&T Services Inc., to Marlene H. Dortch, Secretary, FCC at 2, WC Docket No. 18-155 (filed Dec. 3, 2018) (“AT&T Access Stimulation Ex Parte”); Reply Comments of AT&T Services Inc. at 6-8, WC Docket No. 17-144 (filed July 2, 2018) (“AT&T RoR Reply Comments”).

¹⁵ See Sprint November 9, 2016 Ex Parte; INCOMPAS Transport Comments at 10-11.

¹⁶ AT&T Access Stimulation Ex Parte at 2.

¹⁷ See AT&T RoR Reply Comments at 6-8.

A cursory examination of the *April Data Tables*—which is all the Commission has allowed by providing less than two weeks to comment¹⁸—confirms the need for a competitive market test. For any wire center located more than a half mile from competitive fiber, the “WireCenterDistanceToFiber” table reports “missing value[s]” for the distance to fiber and the owner of the fiber network.¹⁹ Of the 15,595 verified wire centers with CLLI codes included in the data, 3,786 have missing values, indicating that more than 24 percent of ILEC wire centers are nowhere near competitive fiber. When limiting the analysis to areas where the Commission has actually proposed to eliminate pricing regulation (*i.e.*, wire centers that were not previously granted pricing flexibility), the percentage increases to about 34 percent.²⁰ In other words, when using the highly inaccurate proxy for competition of fiber within a half mile, the data still shows that there is no semblance of competition in more than a third of the wire centers that the *Second Further Notice* proposes to deregulate.

These statistics demonstrate that even if the Commission chooses to evaluate competition using the flawed distances reported in the *April Data Tables*, it cannot reasonably deregulate nationwide on the pretense that competition is ubiquitous. That is especially the case given that the *actual* share of wire centers without even the possibility of transport competition under the Commission’s own metric likely exceeds the percentages reported above by a substantial margin. As explained, the *April Data Tables* overstate the possibility of competition by evaluating the wrong distance to just one endpoint, with no attempt to measure demand, and by counting cable

¹⁸ Because of the procedures required to regain access to the secure data enclave, including the need for NORC to mail new RSA tokens, the *April Data Tables* were not available for review on the day the comment period started to run.

¹⁹ See April 24 ReadMe.

²⁰ The table includes 9,217 verified wire centers not previously granted pricing flexibility. 3,105 of the 9,217 have missing values.

companies that do not collocate with ILECs as potential providers of transport facilities that terminate at an ILEC end office.

Nor can the Commission avoid the inconvenient results of the data by disavowing any need to evaluate conditions along interoffice transport routes first place, as some ILECs have suggested.²¹ These ILECs incorrectly assert that a purchasing carrier “can bypass the ILEC’s network altogether” so long as “competitive transport extends to within a half mile of a customer location.”²² But as explained above, the *2017 BDS Order* rejected the assumption that competitors can extend facilities to end-user premises located within a half-mile of *fiber in the ground*. Instead, the *2017 BDS Order*’s competitive market test, which was already inclined to generate false positives for competition, required a customer location to be within a half-mile of *an actual connection*.²³ After applying that test, the Commission determined that it would *not* be possible to extend facilities to the customer location in more than 30 percent of counties with BDS demand, which remain subject to pricing regulation. Thus, the ILECs’ proposed basis for nationwide deregulation simply cannot be squared with the *2017 BDS Order*’s test.

III. PRICE INCREASES CONTINUE TO DEMONSTRATE THAT COMPETITION IS UNAVAILABLE AT DS1 AND DS3 CAPACITIES.

Sprint recently explained that in 2018, a large price cap ILEC increased rates by [BEGIN
HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] for
DS1 and DS3 channel terminations and transport in areas newly deregulated by the *2017 BDS*

²¹ See Reply Comments of CenturyLink, Inc. at 6, WC Docket Nos. 17-144 et al. (filed Mar. 11, 2019) (“CenturyLink Transport Reply”); Reply Comments of AT&T Inc. at 4, WC Docket Nos. 17-144 et al. (filed Feb. 8, 2019).

²² CenturyLink Transport Reply at 6.

²³ *2017 BDS Order* ¶ 132.

Order, resulting in a [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL].²⁴ Sprint also expressed concern that ILECs would continue to raise rates in the future, especially [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL].

The trend of ILEC rate increases has indeed continued, demonstrating that competition for low-bandwidth BDS has not been developing as the *2017 BDS Order* predicted. Specifically, the same ILEC that raised its rates in 2018 doubled down in 2019 by increasing prices not only in areas newly deregulated by the *2017 BDS Order*, but also areas subject to previous grants of pricing flexibility. According to [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] Sprint's total monthly recurring charges will increase by [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] reflecting a [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] increase across all affected services.

AT&T has also raised TDM rates for DS1s and DS3s effective May 15, 2019.²⁵ Excluding OCNs, the simple average of rate increases across all affected services is approximately 14 percent.²⁶ Sprint estimates that it will [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] as a result of AT&T's latest increase alone.

²⁴ Sprint Transport Comments at 8. *See also id.* at 10-12 (explaining that ILECs also charge supracompetitive rates for low-bandwidth ILEC packet-based services).

²⁵ AT&T Prime Access, 2019 Special Access Rate Changes (revised Apr. 12, 2019), <https://primeaccess.att.com/shell.cfm?section=98>.

²⁶ *Id.*

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Some ILECs have claimed that these increases merely reflect their efforts to make up for below-market price caps.²⁷ Yet these ILEC do not present cost data to support their view that price caps were artificially low. Moreover, while ILEC rate increases began with newly deregulated areas, they have expanded to areas that were granted pricing flexibility before the *2017 BDS Order*, demonstrating that the explanation offered is simply incorrect. At bottom, there is no reasonable explanation for the ILECs' ability to so aggressively raise DS1 and DS3 rates other than the lack of effective competition. Accordingly, the Commission should shift its attention toward updating its BDS framework to reflect these "actual market developments."²⁸

CONCLUSION

The Commission should decline its proposal to eliminate price caps for DS1 and DS3 interoffice transport on a nationwide basis. The *April Data Tables* dramatically overstate interoffice transport competition—and yet still manage to show that many areas lack any hope of such competition developing. The ILECs' continued ability to raise DS1 and DS3 rates further establishes that additional deregulation of low-bandwidth services would be misguided.

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May 9, 2019

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²⁷ See Reply Comments of Verizon at 2-3, WC Docket Nos. 16-143 et al. (filed Mar. 11, 2019).

²⁸ *Sw. Bell Tel. Co. v. FCC*, 153 F.3d 523, 547 (8th Cir. 1998); see also *BellSouth v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2006) (“[D]eference owed agencies’ predictive judgments gives them no license to ignore the past when the past relates directly to the questions at issue.”).