

**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)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation (“Sprint”), pursuant to the Public Notice released on May 17, 2018 (DA 18-505), hereby respectfully submits its comments on the Notice of Proposed Rulemaking (“NPRM”) released April 18, 2018 in the above-captioned proceeding.

1. Design of a Reasonable Incentive Regulation Framework

Sprint supports the Commission’s goal of adopting incentive regulation of Business Data Services (BDS) currently subject to rate-of-return (“ROR”) regulation. Incentive regulation has proven to be a superior form of regulation over traditional rate-of-return regulation. Sprint agrees that a properly structured incentive regulation mechanism will encourage ROR incumbent local exchange carriers (“ILECs”) to be more efficient in their provision of BDS, which should in turn result in lower prices for BDS in ROR ILEC service areas. Because BDS is a fundamental component of finished communications services, BDS prices are ultimately borne by consumers and businesses. Thus, FCC adoption of an incentive regulation mechanism that produces reasonable BDS rates, terms and conditions would promote the public interest.

To establish and implement a reasonable incentive regulation mechanism for BDS currently subject to ROR regulation, Sprint recommends the following:

- 1) Initializing Rates -- Service rates subject to incentive regulation should reflect the full transition to the last authorized ROR of 9.75%, or, at a minimum, the initial rates should be adjusted each year to reflect the transition to 9.75% that ends in 2021.¹ ILECs subject to incentive regulation should neither be required to share any over-earnings, nor be allowed to make a low-end adjustment for any under-earnings.
- 2) Pricing Flexibility – ROR ILECs should be permitted flexibility within service bands and permitted to offer BDS services via volume and term plans subject to the same restrictions applied to price cap ILECs.
- 3) Competition Test -- The FCC should focus on successfully transitioning all ILECs to incentive regulation, rather than on attempting to implement a competition test for ROR ILECs at this time. The Commission currently does not have the information necessary to accurately evaluate the level of competition in ROR ILEC service areas, and accordingly should defer from establishing and implementing a competition test for these carriers at this time.
- 4) Scope of Services Subject to Incentive Regulation – The Commission should not eliminate *ex ante* regulation of packet-based BDS services and TDM BDS services greater than a DS3. There has been no demonstration that sufficient alternative facilities to the ROR ILEC's facilities exist in its service territory

¹ *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, 31 FCC Rcd 3087 (2016). The FCC mandated that the ROR ILECs' authorized rate of return of 11.25% was to be decreased .25% per year starting in 2016, and reaching 9.75% in 2021.

to control ILEC BDS prices.² All BDS services, packet-based and TDM, should be subject to incentive regulation. To the extent an ILEC encounters a specific competitive threat, the Commission should permit the ILEC to respond by offering generally available location-specific service offers.

2. A Properly Designed Incentive Regulation Mechanism will Benefit BDS Providers and Users

This Commission has successfully utilized incentive regulation for price cap ILEC access services for decades. If designed properly, incentive regulation should similarly drive ROR ILECs to be more efficient while yielding lower prices for the purchasers of ROR ILEC BDS services. All ROR ILECs, not just ILECs that have elected A-CAM, should be encouraged to adopt incentive regulation.

To achieve the best results, the incentive regulation system must be balanced. Incentive regulation for ROR ILECs need not require revenue sharing if an ILEC earns above its authorized rate of return as long as the regulation also does not permit ILECs low-end adjustments if the ILEC's rate of return dips below the authorized level. In the history of price cap incentive regulation, it was very rare that a price cap ILEC did not achieve at least its authorized rate of return,³ and the transition from ROR regulation to incentive regulation may be expected to unlock cost efficiencies that were not considered or pursued when the ILECs were operating under cost-plus regulation. It is reasonable to

² Sprint and the largest purchaser of BDS services, AT&T, have stated they do not believe there is sufficient competition in A-CAM ROR ILEC service territories (see NPRM, footnote 17).

³ The original price cap LECs were subject to a higher productivity factor and had a higher authorized rate of return. The differences in productivity factor and authorized rate of return make it much more likely that ROR ILECs will be able to achieve the authorized rate of return.

assume that ROR ILECs will recognize those same types of efficiencies, will reap the benefits of cost control, and are likely to meet or exceed the authorized ROR.

One of the efficiencies of incentive regulation is the reduced reliance upon detailed cost information.⁴ Low-end adjustment in the rather unlikely event of “under-earning” in the incentive carrier regime would require just the type of detailed cost information which the carrier in question may no longer be collecting. Because low-end adjustments cannot be accurately made without such cost information, they should be avoided. Instead, the incentive regulation plan the Commission authorizes should balance the ILEC opportunity to exceed its authorized ROR with the much less likely scenario where the ILEC does not achieve the authorized ROR.

The Commission has implemented a multi-year transition of the authorized rate of return for ROR ILECs, to be completed in 2021. Service rates should eventually reflect this full transition. The Commission has two options to reflect the decrease in the authorized rate of return. Service rates entering incentive regulation could reflect the full transition to the ending authorized ROR of 9.75%, or the initial rates could be adjusted each year to reflect the transition to 9.75% that ends in 2021. The first option would be administratively easier to implement; however, the ROR ILECs would likely prefer to keep the authorized return as high as possible for as long as possible. Either way, by 2021 the BDS service rates must reflect the full transition of the authorized ROR. If the ILECs are permitted to modify the service rates each year to reflect the transition in the authorized ROR, it would be reasonable to utilize the same investment base from the year rates are initiated in the incentive regulation system in all years thereafter so the ILECs

⁴ NPRM, paragraph 4.

do not have to recalculate the investment base each year. Finally, any exogenous cost changes should be limited by applying the ratio of BDS revenues to total enterprise revenues.

3. Price Flexibility within the Incentive Regulation System

To limit market distortions, the Commission's incentive regulation mechanism for ROR ILECs should include the same basket and service band structure as the price cap ILEC incentive regulation plan. The upward and downward pricing constraints applicable to the baskets and service bands in the price cap incentive regulation plan should also be implemented for the ROR ILEC incentive regulation plan.

ILECs should be permitted to offer volume and term discount plans for the BDS services placed in the incentive regulation system. In most cases, volume and term discount plans have proven to be beneficial to both purchaser and vendor; however, the Commission must prevent the ROR ILECs from designing the same types of harmful discount plans that price cap ILECs created.⁵ Specifically, the Commission must not permit excessive penalties on revenue shortfalls and must prevent ILECs from creating plans that require the purchase of all or nearly all services from the vendor to qualify for the discount plan.

4. It is Premature to Eliminate *Ex Ante* Regulation for TDM Services Greater Than DS3 and Packet Services in ROR ILEC Service Areas

The industry is rapidly transitioning from utilizing TDM BDS services to packet-based BDS services, but both types of service remain important at this point in the transition to the purchasers of BDS services. Providers are changing out TDM

⁵*Business Data Service in an Internet Protocol Environment, et al.*, Docket No. 16-143, *et al.*, *Tariff Investigation and Further Notice of Proposed Rulemaking*, 31 FCC Rcd 4723 (2016).

electronics for packet-based electronics and augmenting transport facilities in some cases to facilitate this transition. But competitive choice for the purchaser of BDS services is not dependent of the type of signaling that traverses a transport facility. Competitive choice is determined by the presence of an alternative network facility owned by a provider that is offering BDS services. It is Sprint's experience that there are few alternative network provider facilities in ROR ILEC service territories. The density and service demand often render these geographic areas less desirable to alternative service providers. The ROR ILECs are often the only service choice in the vast majority of their service territories. If the purchaser had only one choice for TDM service in the ROR ILEC service area, the purchaser will still only have one choice after the ROR ILEC begins offering packet-based services on their network facilities.

Eliminating *ex ante* regulation is a huge step. It is important that such a dramatic change be supported by some empirical data. The record in this proceeding does not include any evidence that competitive choice in ROR ILEC areas is sufficient to control the prices ROR ILECs will charge for BDS if *ex ante* regulation is eliminated. For this reason, elimination of *ex ante* regulation of TDM services above DS3 and all packet-based BDS services is obviously premature.

The Commission should instead make TDM BDS services above DS3 and all packet-based BDS services subject to incentive regulation. As with TDM services DS3 and below, ROR ILECs should be permitted to offer volume and term plans for all BDS services, packet-based and TDM services above DS3 with the restrictions noted above.

The Commission should permit ILECs to respond to competitive threats by offering location-specific service offers. These location-specific offers would be filed

with the Commission documenting the location of the offer, the customer that purchased it, and the price and unique terms and conditions of the offer. These offers must then be provided to all similarly situated BDS purchasers. If a ROR ILEC considers such location-specific service offering pricing flexibility to be insufficient, it should be permitted to demonstrate in detail the competitive network presence within its service territory that is sufficient to warrant the elimination of *ex ante* regulation on TDM services above DS3 and packet-based BDS services.

5. Conclusion

Sprint supports the Commission's goal of replacing outdated rate-of-return regulation with incentive regulation, and urges the Commission to design the incentive regulation mechanism in a manner that benefits BDS providers, purchasers, consumers and business users.

Respectfully submitted,

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