

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Regulation of Business Data Services for Rate-	)	WC Docket No. 17-144
of-Return Local Exchange Carriers	)	
	)	

**COMMENTS OF TDS TELECOMMUNICATIONS CORP.**

TDS Telecommunications Corp. (“TDS Telecom”), by counsel, files these comments in response to the above-captioned *Notice of Proposed Rulemaking* (“NPRM”).<sup>1</sup>

In initiating this proceeding, the Commission has wisely recognized the profound changes in the marketplace for business data services (“BDS”)—including, among other things, the dramatic increase in demand for Ethernet and other packet-switched services and decline in demand for TDM services. Against the backdrop of these changes, the regulatory burdens of rate-of-return regulation often outweigh the benefits. Removing unnecessary requirements and providing Alternative Connect America Cost Model (“A-CAM”) carriers a pathway to incentive regulation will enable these carriers to more quickly upgrade their networks and better respond to customer demand in this competitive marketplace, ultimately benefitting the rural communities they serve.<sup>2</sup>

In these comments, TDS Telecom largely supports the proposals articulated by the Commission in the NPRM, with modest adjustments to align those proposals with the modern

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<sup>1</sup> *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144, Notice of Proposed Rulemaking (rel. Apr. 18, 2018) (“NPRM”).

<sup>2</sup> Consistent with the terminology used in the NPRM, we have referred to the group of carriers subject to the proposed new framework as “A-CAM carriers,” but we assume that the FCC’s framework would apply to any rate-of-return carrier that no longer receives support based on cost studies (e.g., rate-of-return carriers affiliated with price cap carriers receiving support based on the Connect America Cost Model or reverse auctions).

BDS regulatory framework adopted for price cap carriers in 2017 in the *BDS Order*. The Commission should hew as closely as possible to that landmark reform, in which the Commission recognized that there is “intense competition present in [the] market,” a finding that encompassed rural areas served by price cap carriers.<sup>3</sup> Notably, rural areas served by price cap carriers resemble those of rural areas served by rate-of-return carriers.<sup>4</sup> Accordingly, there is no reason to create a separate regulatory framework for A-CAM carriers. The Commission should extend the modern BDS framework adopted in 2017 to A-CAM carriers so that the rural businesses and other enterprises they serve may benefit from the increased levels of investment and competition it will produce.

Thus, the Commission should rely upon the results of the competitive market test adopted in the *BDS Order*, using the same county-by-county data, to determine whether price caps should apply to an electing A-CAM carrier’s TDM end-user channel terminations at or below a DS3 level in a given county. In counties deemed noncompetitive, price caps should be applied to these TDM services but, as proposed by the Commission, A-CAM carriers should be allowed to offer term and volume discounts and contract-based services. For all TDM transport, all higher-speed TDM services, and all packet-switched business data services, the Commission should eliminate *ex ante* pricing regulation and allow marketplace forces to determine pricing, terms, and conditions. These regulatory reforms will allow electing A-CAM carriers to focus on deploying infrastructure and meeting the growing demands of the marketplace for next-generation business data services.

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<sup>3</sup> *Business Data Services in an Internet Protocol Environment, et al.*, WC Docket No. 16-143 et al., Report and Order, 32 FCC Rcd 3459, 3461, para. 1 (2017) (“*Business Data Services* or *BDS Order*”).

<sup>4</sup> We understand that ITTA and USTelecom will be filing a study that provides an empirical basis for finding that rural areas of rate-of-return carriers resemble those of price cap carriers in the context of competition for business data services.

**I. TO INCREASE REGULATORY FLEXIBILITY, THE COMMISSION SHOULD ADOPT ITS PROPOSAL TO PROVIDE A-CAM CARRIERS AN OPTIONAL PATHWAY TO INCENTIVE REGULATION.**

As the Commission has recognized, legacy rate-of-return regulations can act as a hindrance given the competitive realities of the BDS market, which would be even more robust absent such barriers. The modern regulatory framework for BDS adopted last year for price cap carriers shows the Commission's commitment to encouraging competition in this market. Allowing carriers to adopt an incentive-based framework, instead of the legacy rate-of-return regulatory regime, will enable electing A-CAM carriers to increase investment in next-generation networks and respond to customer preferences. In short, as the Commission correctly predicts, the option of incentive regulation for A-CAM carriers "will spur entry, innovation, and competition in the affected BDS markets."<sup>5</sup>

In contrast, legacy rate-of-return requirements impose unnecessary costs and restrict A-CAM carriers from responding to the changing needs of customers in the marketplace for business data services, ultimately limiting investment and innovation. Providing A-CAM carriers the ability to opt in to a more modern regulatory framework to adapt to a changing marketplace, would provide substantial benefits to these carriers and the BDS ecosystem as a whole.

This path forward, however, should truly be optional, including the ability to opt in to the new regulatory scheme at a later time. There may be a variety of reasons that rate-of-return carriers may not be ready to immediately opt out of rate-of-return regulation, including determining business strategy and compliance measures. This does not mean, however, that these carriers will never be ready to embrace the more flexible and efficient regulatory

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<sup>5</sup> *NPRM* at para. 1.

framework. Accordingly, instead of a one-time decision to either opt in or not, A-CAM carriers should be given at least an annual opportunity to elect the new regime. This will enable carriers to adopt the new framework in a manner that will bring as many benefits to customers as possible.

**II. FOR LOWER-SPEED TDM SERVICES, THE COMMISSION SHOULD ADOPT ITS PROPOSAL FOR INCENTIVE REGULATION OF END USER CHANNEL TERMINATIONS, BUT IT SHOULD ELIMINATE EX ANTE PRICING REGULATION FOR TDM TRANSPORT.**

**A. Given the Similarities Between Rural Areas of Price Cap and Rate-of-Return Carriers, the Commission Should Rely on the Results of the 2017 Competitive Market Test for Regulating Lower-Speed TDM Channel Terminations.**

For lower capacity TDM BDS offerings (i.e. those at or below a DS3), the Commission has proposed to implement optional incentive (price cap) regulation for electing carriers.<sup>6</sup> This is the correct approach with respect to end user channel terminations. As the Commission has explained, incentive regulation “will encourage competition for BDS in areas served by electing A-CAM carriers and reduce unnecessary regulatory burdens on electing A-CAM carriers.”<sup>7</sup>

In particular, the Commission should apply, or not apply, price caps for electing A-CAM carriers using the list of non-competitive and competitive counties found at <https://www.fcc.gov/bds-county-lists>.<sup>8</sup> The Commission created this list using the competitive market test (“CMT”) adopted in the *BDS Order*.<sup>9</sup> The Commission appropriately can and should

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<sup>6</sup> See *NPRM* at paras. 17-34.

<sup>7</sup> *Id.* at para. 9.

<sup>8</sup> See FCC, BDS County Lists (last visited June 18, 2018).

<sup>9</sup> TDS Telecom understands that virtually all counties in areas served by electing A-CAM carriers were classified as competitive or non-competitive pursuant to the CMT. To the extent there are a few counties not classified pursuant to that test, it would be reasonable for the Commission to classify such counties as non-competitive until the CMT is re-run as provided for by the *BDS Order*.

use its predictive judgment to make the inference that the rural areas of price cap carriers resemble those of rate-of-return carriers in the context of BDS competition. Based on that finding, there is no reason to hold that a given county is “competitive” for price cap carriers but not for electing A-CAM carriers, or vice versa. Regarding any updates to the list of competitive and non-competitive counties, the Commission simply can apply whatever changes result from application of the subsequent tests described in Section 69.803 of the Commission’s rules, equally to price cap and electing A-CAM carriers.<sup>10</sup>

**B. In Counties Deemed Noncompetitive, the Commission Should Allow A-CAM Carriers to Offer Term and Volume Discounts and Contract-based Services for End User Channel Terminations At or Below a DS3 Level.**

As it did for price cap carriers, in counties not deemed competitive, the Commission should nevertheless allow electing A-CAM carriers to offer term and volume discounts and contract-based services for their TDM end user channel termination services offered at speeds at or below a DS3. Adoption of the Commission’s proposal to allow this “Phase I” pricing flexibility to electing A-CAM carriers will provide substantial benefits in rural areas to enterprises that rely on BDS.<sup>11</sup>

The inability to provide term and volume discounts and contract tariffs not only hinders BDS providers, but also customers. Offering these types of incentives encourages competition in the market and reduces prices for customers. As the Commission noted in the *BDS Order*, Phase I pricing flexibility can help “ensure affordability of DS1 and DS3 services without unnecessarily constraining incumbent LECs’ incentives to invest and innovate.”<sup>12</sup>

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<sup>10</sup> See 47 C.F.R. § 69.803(c).

<sup>11</sup> See *NPRM* at para. 12.

<sup>12</sup> *BDS Order*, 32 FCC Rcd at 3538, para. 178.

**C. Ex Ante Pricing Regulation is Unnecessary for TDM Transport.**

TDS Telecom encourages the Commission to remove *ex ante* pricing regulation for all transport services offered by electing A-CAM carriers, as it did for price cap carriers. This approach is consistent with the *BDS Order*, in which the Commission found reasonably competitive outcomes “for transport services, where the record presents little evidence of competitive problems, and where low bandwidth demand is quickly turning into high bandwidth demand.”<sup>13</sup> The Commission applied this finding to price cap carriers regardless of the counties they serve, including rural areas that resemble those served by A-CAM carriers.

The Commission has also noted that “transport service represents the ‘low-hanging fruit’ of the business data services circuit, which makes it particularly attractive to new entrants,”<sup>14</sup> so the Commission should be wary of over-regulating a market that new competitors are likely to continue to join. Accordingly, there is no reason to subject electing A-CAM carriers offering transport to any different treatment from price cap carriers serving rural areas; otherwise, the Commission may unintentionally stifle the regulatory environment that could encourage even more innovation in and competition for these services. This would run counter to the Commission’s observation that the significant amount of competition for TDM transport services “generally support[s] using a deregulatory approach for TDM transport and other non-end user channel termination services.”<sup>15</sup>

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<sup>13</sup> *Id.* at 3468, para. 16.

<sup>14</sup> *Id.* at 3498, para. 82.

<sup>15</sup> *Id.* at 3501, para. 90.

**D. The Commission Should No Longer Require Part 32 Accounting for Electing A-CAM Carriers and Should Instead Allow the Use of GAAP.**

TDS Telecom likewise supports the Commission's proposal to allow electing A-CAM carriers to keep their accounts in accordance with GAAP.<sup>16</sup> Once the Commission implements its new framework for BDS for A-CAM carriers, there will be no reason for such providers to maintain books in accordance with the Part 32 Uniform System of Accounts.<sup>17</sup> It is a poor use of resources to maintain two different sets of books, and there is no reason to treat A-CAM carriers differently from price cap carriers with regard to these accounting principles.<sup>18</sup>

**E. The Commission Should Not Transition Electing A-CAM Carriers to Incentive Regulation for Switched Access Services.**

A-CAM carriers, including TDS Telecom, have made critical investment strategies based on the existing schedule for phasing down terminating switched access charges and terminating intercarrier compensation, along with the critical support provided by the Access Recovery Charge ("ARC") and CAF-ICC. It is therefore appropriate that the Commission "do[es] not propose to transition electing A-CAM carriers to incentive regulation for switched access services."<sup>19</sup>

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<sup>16</sup> See *NPRM* at para. 34.

<sup>17</sup> See generally 47 C.F.R. Part 32.

<sup>18</sup> The Commission similarly should eliminate other legacy rate-of-return regulations that lack relevance once an A-CAM carrier opts into the modern BDS regulatory framework. For example, Section 54.1305 of the Commission's rules states that "each" ILEC must provide NECA with unseparated loop costs on an annual basis. See 47 C.F.R. § 54.1305. Once an electing A-CAM carrier is offering BDS pursuant to incentive regulation, however, there is no reason for the carrier to prepare this information in the ordinary course. The regulatory burdens of compiling and filing this information thus outweigh the benefits for electing A-CAM carriers, which should be excluded from the filing requirement.

<sup>19</sup> *NPRM* at para. 15.

### **III. THE COMMISSION SHOULD ADOPT ITS PROPOSAL TO REMOVE EX ANTE PRICING REGULATION FROM PACKET-BASED BDS AND HIGHER CAPACITY TDM-BASED BDS.**

TDS Telecom agrees with the Commission's proposal to eliminate ex ante pricing regulation of electing A-CAM carriers' packet-based and TDM-based BDS providing bandwidth in excess of a DS3. Taking this step would provide parity between A-CAM carriers and their price cap carrier counterparts, to the benefit of rural customers. It also would promote and accelerate the transition to all-IP networks, which will have long-term benefits for consumers and enterprise customers alike, including those in rural areas.

In deciding that packet-based services should not be subject to tariffing and price cap regulation, "even in the absence of a nearby competitor," the Commission explained in the *BDS Order* that "[p]acket-based services represent the future of business data services and are readily scalable, so competitive LECs are generally very willing to deploy such services beyond their footprints."<sup>20</sup> This reality is equally applicable in areas served by A-CAM carriers, in which these carriers' TDM services have been on the decline, while they have seen increases in their Ethernet connections.

For example, in TDS Telecom's case, over the period from December 2013 to December 2017, the company saw a decrease in TDM connections of 11.9 percent. Over the same period, TDS Telecom saw an increase of 10.7 percent in Ethernet connections. As these trends continue for TDS Telecom and other A-CAM carriers, incentive regulation will be a strong catalyst that encourages additional investment in next-generation BDS.

Additionally, the rural areas of price cap carriers resemble those of rate-of-return areas, at least in the context of the business data services marketplace. It would therefore be inappropriate

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<sup>20</sup> *BDS Order*, 32 FCC Rcd at 3500, para. 88.



to subject rural price cap carriers to a more flexible regime than rural A-CAM carriers. Counties served by carriers operating under either regime should largely experience similar competitive realities, so the same regime set forth for packet-based services and higher-speed TDM services in the *BDS Order* should likewise apply in electing A-CAM carriers' areas as well.

## CONCLUSION

TDS Telecom supports the Commission's proposal to provide A-CAM carriers with a pathway to a modern regulatory framework for their business data services. That framework, in turn, should resemble as closely as possible the successful regulatory framework adopted for price cap carriers in the 2017 *BDS Order*. By enabling A-CAM carriers to operate under a more flexible and efficient regulatory framework, the Commission will help to close the digital divide for rural Americans as next-generation business data services, and the important services that depend on them, will become more widely available at competitive rates.

Respectfully submitted,

**TDS TELECOMMUNICATIONS CORP.**

By: /s/ Matthew S. DelNero

Matthew S. DelNero  
Thomas G. Parisi  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001

*Counsel for TDS Telecommunications Corp.*

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