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	)	

REPLY COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these Reply Comments in response to comments filed regarding the Notice of Proposed Rulemaking released April 18, 2018, in the above-captioned proceeding.[2] In its initial Comments, NTCA supported adoption of a defined path to permit certain RLECs to elect price cap regulation of their special access services (also known as "Business Data Services" or "BDS") and encouraged the Federal Communications Commission (the "Commission") to apply the existing Competitive Market Test ("CMT") to those RLECs that make the election.

As a threshold matter, there appears to be no opposition to permitting RLECs that receive universal service fund support under either the Alternative Connect America Cost Model ("A-CAM") or the Alaska Plan to elect voluntarily to move their BDS to incentive regulation.[3]

---

[1] NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers ("RLECs") and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

[2] *Regulation of Business Data Services for Model-Based Rate-of-Return Carriers*, WC Docket No. 17-944, DA 18-505, Notice of Proposed Rulemaking (rel. Apr. 18, 2018) ("NPRM").

[3] *See* Comments of ITTA and USTelecom ("ITTA/USTelecom"), WC Docket No. 17-144 (filed June 18, 2018), at 2-3; Comments of WTA-Advocates for Rural Broadband, WC Docket No. 17-144 (filed June 18, 2018), at 1; Comments of TDS Telecommunications Corp., WC

Rather, any disagreements arise with respect to a few discrete, but important, details of such a transition, including how markets will be identified as competitive and the exact scope of any transition to incentive regulation.

With respect first to the CMT, although determinations with respect to BDS competition were made initially in the context of providing certain regulatory relief to price cap carriers, the geographic scope of the market evaluated was not limited to price cap areas. As ITTA/USTelecom highlight in their comments, the Commission's CMT defined the relevant markets as counties,[4] the boundaries of which do *not* neatly align with study area boundaries between price cap carriers and RLECs (although, interestingly, some of the most significant would-be competitors – cable providers – often tend to operate based upon franchise boundaries that can correspond to counties). It is also worth observing, as ITTA/USTelecom point out, that the presence of a single facilities-based competitor anywhere in a given county was deemed sufficient to constrain a price cap carrier's provision of BDS *throughout* the county and thus satisfy the CMT.[5] Despite AT&T's protestations that the Commission should only now look on a more granular basis at specific *portions* of a county served by a carrier,[6] there is no sound reason the same logic should not apply with equal force *throughout* that same market as already defined and approved by the Commission. Moreover, as the NPRM highlighted, only 78 "purely

---

Docket No. 17-144 (filed June 18, 2018), at 1; Comments of Sprint Corp. ("Sprint"), WC Docket No. 17-144 (filed June 18, 2018), at 1; Comments of AT&T Services, Inc. ("AT&T"), WC Docket No. 17-144 (filed June 18, 2018), at 2.

4 ITTA/USTelecom Comments at 18.

5 *Id*. at 19.

6 AT&T Comments at 14; *see also* Sprint Comments at 7.

RLEC" counties were not analyzed by the existing CMT.[7] Finally, if the protracted process that ultimately resulted in a competitiveness determination for price cap BDS is any indication,[8] establishing a new CMT solely for BDS services offered by electing RLECs would be unnecessarily burdensome for all involved. It therefore represents sound policy and logic to employ the existing CMT in the context of electing RLEC operations as well.

Regarding the scope of any transition to incentive regulation, AT&T contends that the Commission should not modify or waive the "all-or-nothing" rule that requires an electing carrier to transition all interstate rate-of-return services in all study areas to price cap treatment.[9] But the "all-or-nothing" rule, as AT&T acknowledges,[10] was enacted largely to preclude "internal cost shifting" among areas or services in a manner that permits excessive recovery in other regulated markets – and prior reforms adopted by the Commission in the switched access service marketplace have changed the regulatory landscape. Indeed, even as AT&T admits that terminating end office rates are transitioning to free for interexchange carriers, and admits as

---

7 NPRM at ¶ 38 (internal citations omitted).

8 The Commission adopted an Order in August 2012, announcing it would "issue a comprehensive data collection order" to determine where competition exists for special access services. *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, Report and Order, 27 FCC Rcd 10557, 10561 (2012), at ¶ 7. Two years later, on August 8, 2014, the Commission announced it would finally begin collecting data. *Commission Moves Forward With Special Access Data Collection*, WC Docket 05-25, Public Notice, DA 14-201 (WCB Aug. 18, 2014). In May 2017, the Commission finally released the list of counties found to have competitive BDS offerings. *See Wireline Competition Bureau Publicly Releases List of Counties Where Lower Speed TDM-Based Business Data Services are Deemed Competitive, Non-Competitive, or Grandfathered, WC Docket No. 16-143, et al.*, Public Notice, DA 17-463 (WCB May 15, 2017).

9 AT&T Comments at 4-11.

10 *Id*. at 5.

well that originating switched access charges are capped, it expresses concern that terminating switching and transport charges are "not reformed and remain under the rate-of-return regime."[11] This last part, however, misses the mark; the 2011 reforms made clear that, as of the effective date of the rules, RLEC "interstate switched access rates elements, including all originating and terminating rates and reciprocal compensation rates are capped."[12] It is true that RLEC transport and tandem switching are not yet likewise on an inexorable march to mandated "free," but these rate elements are reformed and capped. Thus, there is no material risk of "gaming" because costs that a carrier might think of reallocating (even if possible) to switched access from BDS are then subject to capped switched access rates or via a frozen-and-declining-over time eligible recovery baseline for Connect America Fund-Intercarrier Compensation ("CAF-ICC") support. The overly strict application of an outdated price cap "all-or-nothing" rule in these circumstances would therefore serve little purpose in this instance.

Respectfully submitted,

NTCA–The Rural Broadband Association

By: /s/ Michael Romano
Michael Romano
Tamber Ray
4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
703-351-2000 (Tel)
tray@ntca.org

July 2, 2018

---

11 *Id*. at 10.

12 *Connect America Fund, et al.*, WC Docket No. 10-90, *et al*., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17934 (2011), at Fig. 9.