

Before the  
Federal Communications Commission  
Washington, DC 20554

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

**COMMENTS OF  
BLACKFOOT TELEPHONE COOPERATIVE, INC.  
LINCOLN TELEPHONE COMPANY  
MID RIVERS TELEPHONE COOPERATIVE, INC.  
THE MONTANA TELECOMMUNICATIONS ASSOCIATION  
PROJECT MUTUAL TELEPHONE COOPERATIVE ASSOCIATION, INC.  
RANGE TELEPHONE COOPERATIVE, INC., and  
SOUTHERN MONTANA TELEPHONE COMPANY**

**I. INTRODUCTION & SUMMARY**

Blackfoot Telephone Cooperative, Inc., Lincoln Telephone Company, Mid Rivers Telephone Cooperative, Inc., The Montana Telecommunications Association, Project Mutual Telephone Cooperative Association, Inc., Range Telephone Cooperative, Inc., and Southern Montana Telephone Company (collectively, “Big Sky Companies”) support the initiation of a rulemaking as requested by the Independent Telephone & Telecommunications Alliance’s and US Telecom’s Petition for Rulemaking (“Petition”) to establish price cap-like regulation for rural incumbent local exchange carriers (“RLECs”) that have opted to receive their high cost universal service support through the Alternative – Connect America Model (“ACAM”). Allowing ACAM electing rate-of-return carriers the option to elect price-cap like regulation for business data services (“BDS”) will benefit their customers as it will give those carriers the same flexibility for pricing, terms and conditions that competitive carriers are currently offering. Further, eliminating

cost-study and other tariff related expenses associated with legacy, rate-of-return service offerings as well as unnecessary administrative requirements is consistent with the Commission's goal of streamlining and modernizing rate regulations for BDS.

## **II. ALLOWING ACAM RATE-OF-RETURN LECs TO OPT-IN TO PRICE CAP-LIKE REGULATION WILL BENEFIT CONSUMERS.**

In electing ACAM universal service fund ("USF") support, more than 250 rate-of-return RLECs opted for alternative regulation. That alternative regulation essentially gave those electing RLECs the ability to deploy their limited, essential USF dollars in an efficient, predictable manner that will provide the fastest capable broadband speeds to the most consumers in their respective service areas, but at a minimum, at the speeds and at the number of locations imposed by the USF Reform Order.<sup>1</sup> By electing alternative regulation, ACAM RLECs have the pricing flexibility (subject to certain maximum prices for broadband services established by the FCC) to sell retail broadband service at rates and upon terms and conditions that are tailored and responsive to what their customers want and can afford. Alternative regulation also gives ACAM RLECs the ability to respond better to the growing number and types of broadband competitors that continue to emerge in rural markets. Put differently, ACAM RLECs have the ability to price their broadband services based upon market forces, subject to certain consumer safeguards.

While the ACAM has provided electing LECs pricing flexibility on the retail, consumer side of their broadband service offerings, these LECs are still subject to legacy, rate-of-return regulation for BDS. Granting ACAM RLECs the option of electing price cap-like regulation for BDS will not only create continuity between ACAM RLECs' consumer and business broadband

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<sup>1</sup> *Connect America Fund*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*USF Reform Order*).

services, but it will also place such BDS services on the same, level playing field as their competitors. It has been the Big Sky Companies' experience that they are facing increasing amounts of BDS competition, particularly from CLECs, WISPs and cable companies and especially in counties deemed competitive by the FCC. The Big Sky Companies and other ACAM RLECs are hamstrung, however, in being able to offer a competitive responses to these emerging providers. Specifically, the rate-of-return regulations are inflexible when it comes to pricing and other terms and conditions of providing BDS. This inflexibility: (a) gives CLECs, WISPs, and cable companies a competitive advantage, (b) causes ILEC customers to drop services with ACAM RLECs to obtain lower pricing from CLECs and cable companies, (c) disincentives ACAM RLECs from investing capital to improve their networks because they are losing customers to competitors, and thereby (d) reduces competition and slows the pace of improving networks, particularly in unserved and underserved areas.

Under price cap-like regulations, ACAM RLECs that opt-in would have lower costs and flexibility to offer better rates, terms and conditions for BDS which, in turn, would: (a) spur greater competition, (b) incentivize investment in infrastructure/network improvement, (c) enable carriers to provide BDS to customers at lower prices, and (d) improve customer satisfaction, particularly in rural areas—whether it be small, family run business, enterprise-level companies, hospitals, or public institutions like schools and libraries.

The Petition states that ACAM RLECs will be subject to the same regulations as proposed in the recent BDS Order, ensuring that consumers of TDM-based services less than 50 Mbps that lack competitive alternatives will have rate protection.<sup>2</sup> Thus, conceptually, the rule proposed in the Petition will create the same competitive pricing framework for BDS services as currently exist

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<sup>2</sup> Letter from Gregory J. Vogt, Counsel to ITTA and USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-144 (filed May 25, 2017) (*The Petition*).

for ACAM RLECs' retail broadband services, subject to certain consumer pricing safeguards. This proposed rule in the Petition strikes the appropriate balance between spurring innovation, investment and competition and protecting businesses that do not have access to competitive or alternative BDS providers. Thus, the Big Sky Companies support the Petition as it will result in numerous consumer benefits.

### **III. THE PROPOSED RULE ELIMINATES UNNECESSARY ADMINISTRATIVE PROCESSES AND EXPENSE.**

Compliance with existing rate-of-return based rate regulations for special access services requires ACAM RLECs to incur substantial and unnecessary costs. Historically, rate-of-return regulated companies needed to conduct annual cost studies for three primary reasons, to determine: 1) their interstate costs for purposes of calculating high cost universal service support; 2) their interstate switched access revenue requirement; and 3) their interstate special access revenue requirement. The *Transformation Order*<sup>3</sup> essentially did away with the need for RLECs to calculate their interstate switched access revenue requirement as RLECs have been receiving a fixed and declining amount of “eligible recovery” in lieu of switched access and intercarrier compensation revenues since 2012. In electing alternative regulation, ACAM RLECs receive a fixed amount of USF regardless of their actual interstate costs, so there is no need to prepare a cost study for the purposes of calculating high cost USF support. Today, the only real reason an ACAM RLEC needs to prepare a cost study is to calculate their interstate special access revenue requirement.

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<sup>3</sup> Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*Transformation Order*), 847, *et seq.*; *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014).

Calculating an interstate special access revenue requirement and rates on an annual basis has significant costs. These costs include, but are not limited to, costs associated with operating under a tariff, tariff review plans, annual cost studies, cost support, and related regulatory compliance requirements. In addition, calculating special access rates based upon legacy, rate-of-return regulation requires ACAM RLECs to keep burdensome, Part 32 accounting records. Today, ACAM RLECs keep an entirely separate set of books under Part 32 for the sole purpose of preparing a cost study used to set their interstate special access revenue requirement. With the option to elect price cap-like regulation, this burden and expense could be removed.

Both the financial and administrative costs of calculating a special access revenue requirement, as described above, significantly outweigh the benefits. Setting special access rates upon price cap-like principles as described in the Petition will eliminate these unnecessary costs and administrative burdens.

#### **IV. THE PETITION CAN BE IMPLEMENTED WITHOUT MODIFYING THE SWITCHED ACCESS REFORM ESTABLISHED BY THE TRANSFORMATION ORDER.**

In the *Transformation Order*, the FCC resolved a decade-long intercarrier compensation proceeding that parsed-out, made explicit, and effectively set a sunset date for the terminating switched access/intercarrier compensation regime.<sup>4</sup> While portions of the *Transformation Order* were judicially challenged and other parts reversed by subsequent FCC administrations, the new switched access/intercarrier compensation regime established by the FCC was implemented and has been operating for more than five-years. Rate-of-return LECs were placed upon a 10-year

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<sup>4</sup> Id. ¶¶ 798, *et seq.*

glide-path for terminating switched access and intercarrier compensation rates that will ultimately be phased-out.<sup>5</sup>

RLECs are now halfway through the 10-year glide-path established by the *Transformation Order*. As described in the Petition, ACAM RLECs that opt in into price cap-like regulation should simply remain on the 10-year, rate-of-return glide path.<sup>6</sup> Opening a new intercarrier compensation proceeding for the purpose of examining the impact of ACAM LECs opting into price cap-like BDS regulations would be opening the proverbial “can of worms” that does not need to be opened. As explained in the Petition, these non-BDS related services are subject to their own detailed regulations and consumer safeguards and transition plans.<sup>7</sup> There is no reason nor need to revamp these rules and safeguards.

## V. CONCLUSION

Considering the foregoing, the Big Sky Companies respectfully ask the FCC to grant the Petition that will allow ACAM RLECs to opt into existing price cap-like regulations for the provision of BDS.

Respectfully Submitted,

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<sup>5</sup> 47 C.F.R. § 51.909 (2016).

<sup>6</sup> Petition pp. 12-13.

<sup>7</sup> *Id.*

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**Date: July 6, 2017**