

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

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

COMMENTS OF TDS TELECOMMUNICATIONS CORP.

TDS Telecommunications Corp. (“TDS Telecom”) files these comments in support of the Petition for Rulemaking (“Petition”) of the Independent Telephone & Telecommunications Alliance (“ITTA”) and USTelecom (collectively, “Petitioners”), which requests that the Commission allow model-based rate-of-return carriers to opt into the Commission’s price cap regime for the provision of business data services (“BDS”), subject to certain conditions.¹

TDS Telecom agrees with the Petitioners that the market has evolved to the point where the burdens of rate-of-return regulations for BDS offered by model-based carriers often outweighs the benefits. Modernizing rate regulations as proposed by Petitioners would afford model-based carriers like TDS Telecom the flexibility to compete in the BDS marketplace with other entities that are not subject to cumbersome, legacy regulations. Removing these burdens likewise would serve the Commission’s rural broadband goals by providing greater flexibility to invest in new infrastructure in the rural areas served by model-based carriers like TDS Telecom. In that vein, TDS Telecom also agrees with Petitioners that regardless of a model-based carrier’s election to adopt price cap regulations for BDS, certain rate-of-return provisions—such as those

¹ Petition for Rulemaking of ITTA and USTelecom, WC Docket No. 17-144 (filed May 25, 2017) (“*Petition for Rulemaking*”).

concerning transition mechanisms for terminating switched access charges—should remain in place given their role in model-based rate-of-return carriers’ investment strategies for the rural communities they serve.

I. LEGACY REGULATIONS CAN INHIBIT THE ABILITY OF MODEL-BASED RATE-OF-RETURN CARRIERS TO COMPETE WITH LESS REGULATED COMPETITORS IN THE BDS MARKETPLACE.

Despite being subject to the same competitive realities as price cap carriers serving rural areas, currently model-based rate-of-return carriers cannot avail themselves of the Commission’s modern regulatory framework for BDS. These competitive realities include the significant, growing number of companies vying to participate in the burgeoning BDS market. As the Commission observed, cable providers’ BDS sales have grown by an astounding annual rate of twenty percent over the past several years.² At the same time, many competitive LECs have seen success in expanding their fiber networks. It is unreasonable to expect all model-based rate-of-return carriers to invest and succeed under a legacy rate-of-return framework for BDS when other participants in the marketplace enjoy significantly greater flexibility following the Commission’s landmark reform of BDS rules.

Legacy rate-of-return regulations hinder model-based carriers’ ability to respond nimbly to customer demands and competition. As Petitioners point out, compliance with rate-of-return-based rate regulations, including “tariffing, tariff review plans, cost studies, and associated requirements,”³ imposes burdens on model-based carriers in their BDS offerings. As a result, model-based carriers that have to meet the demands of the rate-of-return regime often cannot meet the needs of their BDS customers for better pricing options or improved services.

² *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, *et al.*, Report & Order, FCC 17-43, ¶ 1-2 (re. Apr. 28, 2017) (“*BDS R&O*”).

³ *Petition for Rulemaking* at ii.

The competitive imbalance in the current regulatory environment becomes even clearer when a model-based rate-of-return carrier attempts to adjust to the loss of a BDS customer to an unregulated competitor. The burdens of complying with legacy regulations largely are static, meaning they are not lessened with the loss of a customer. The static nature of such regulatory burdens means that the loss of customers to a competitor leaves the carrier with a “choice” between two unappealing options: either raise rates enough to pay for the fixed costs of regulatory compliance (such as detailed tariffing requirements) and risk losing even *more* customers, or absorb the high costs of compliance in hopes of being able to remain in the BDS market.

Put simply, complying with the legacy rate-of-return framework for BDS can make model-based rate-of-return carriers less competitive, less able to invest in next-generation networks, and poorly positioned to respond to customer preferences. In these cases, the burdens of compliance outweigh any purported benefits of rate-of-return regulation (namely, maintaining reasonable rates through complicated legacy mechanisms). Having found that in markets “as highly dynamic and complex as those for BDS,” competition, and not complex regulation, “is the single best way of ensuring that customers benefit,” the Commission should allow model-based rate-of-return providers the option of operating under the new regulatory framework.⁴

II. ALLOWING MODEL-BASED CARRIERS TO OPT INTO THE NEW PRICE CAP REGIME WOULD FURTHER THE COMMISSION’S GOAL OF PROMOTING AFFORDABLE ACCESS TO BROADBAND NETWORKS IN RURAL AMERICA.

The Commission rightly has found that the “universal service challenge of our time” is to ensure that all Americans have affordable access to high-speed, reliable broadband—whether

⁴ *BDS R&O* at ¶ 125.

they live in the urban Hollywood hills or the rural mountains of Appalachia.⁵ Likewise, during a recent trip to address broadband deployment in rural America, Chairman Pai aptly observed, “[t]here’s a big and growing divide, a ‘digital divide,’ in this country between those who have high-quality internet access and those who don’t . . . Disproportionately, rural Americans find themselves on the wrong side of that equation.”⁶

Allowing model-based rate-of-return carriers to opt into the Commission’s new price cap regime for BDS will aid these carriers in meeting the challenges articulated by the Chairman and Commission. By removing unnecessary regulatory burdens and maximizing flexibility, the Commission will remove deterrents to infrastructure investment and enhance the ability of model-based carriers to direct capital to next-generation networks that will benefit consumers, businesses, schools, and other enterprise customers, as well as the ordinary consumers these enterprises serve.

The desire to encourage the development of modern, IP-based networks in part motivated the Commission to adopt a new regulatory framework for business data services offered by price cap carriers.⁷ The Commission now has the opportunity to take the next logical step and extend this modern regulatory framework to model-based rate-of-return carriers, enabling robust competition to the benefit of rural communities.⁸

⁵ *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 5 (2011) (“*USF-ICC Transformation Order*”).

⁶ Mason Dockter, *FCC chairman visits Iowa, discusses rural broadband access*, SIOUX CITY J. (Jun. 7, 2017), http://siouxcityjournal.com/news/local/fcc-chairman-visits-iowa-discusses-rural-broadband-access/article_90754cf6-e35c-5120-9e4b-9c5ce1bcff44.html.

⁷ See, e.g., *BDS R&O* at ¶ 95 (“Our decision in this Order will promote investment, deployment, and competition in the business data services market in a way that will benefit all end users, including those that currently use DS1s and DS3s.”).

⁸ *Petition for Rulemaking* at 7-8 (citing *BDS R&O* at ¶¶ 4, 86).

III. THE OPTIONAL PRICE CAP REGULATORY REGIME PROPOSED BY PETITIONERS IS THE MOST EFFECTIVE WAY TO BENEFIT CUSTOMERS, CARRIERS, AND THE COMMUNITIES THEY SERVE.

Consistent with the Commission’s finding that “price cap regulation is the most effective regime for ensuring that rates for non-competitive [BDS] are just and reasonable,”⁹ TDS Telecom supports Petitioner’s proposal to permit model-based rate-of-return carriers to opt-in to price cap regulations for BDS. Under Petitioners’ proposal, the Commission would protect consumers from unreasonable rates by using price caps for TDM-based channel termination services of less than 50 Mbps when offered in non-competitive counties, and through application of sections 201, 202, and 208 of the Communications Act to all common carrier BDS offerings in both competitive and non-competitive counties.¹⁰

Petitioners rightly caution, however, against making the price cap regime mandatory and bringing all related regulations along with it. Rather, the Commission should afford model-based rate-of-return carriers the opportunity to examine their unique circumstances and determine which regulatory regime—rate-of-return or price cap—would best enable them to deploy modern BDS in their service areas.

In addition, rate-of-return carriers have been operating based on the presumption that their designated schedule for phasing out terminating switched access charges and terminating intercarrier compensation would apply, and that the Access Recovery Charge and CAF-ICC support is necessary to ensure that the phase-out process runs smoothly. Model-based carriers already have made critical business decisions and investment strategies based on these presumptions, and it could be very difficult for them to opt into the new BDS regime if losing

⁹ *BDS R&O* ¶ 179.

¹⁰ *Petition for Rulemaking* at 11-12.

these transition mechanisms were required. For model-based rate-of-return carriers, providing both the flexibility of the price cap regime for BDS as well as the transition facilitators that such carriers already depend upon would give them the greatest chance to make rural BDS catch up to its more advanced, urban-based counterparts.

IV. CONCLUSION

For the foregoing reasons, TDS Telecom supports Petitioners' request that the Commission initiate a rulemaking to adopt rules that would permit model-based rate-of-return carriers to elect price cap regulation for their BDS services, subject to the conditions specified in the *Petition for Rulemaking*.

Respectfully submitted,

/s/

Yaron Dori
Jadzia Butler
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C. 20001-4956

Counsel for TDS Telecommunications Corp.

July 6, 2017