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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Room TW-B204F
Washington, DC 20554

Dear Ms. Dortch:

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

AT&T Services, Inc. submits these brief comments in response to the Commission's June 6, 2017 Public Notice. On May 25, 2017, a group of model-based rate-of-return carriers filed a Petition¹ requesting the Commission initiate a rulemaking to allow the ACAM carriers to opt into the Commission's recently adopted price cap rules for business data services (BDS).² In support, the ACAM carriers assert that rate-of-return regulation imposes unnecessary cost burdens on their BDS that are not borne by competing CLECs and cable companies and limits their flexibility to respond to consumer needs.³ Petitioners propose a rule addressing the election and specific implementation issues such as a proposed one-time lifting of the category relationship freeze, and other transition mechanisms. While AT&T does not object to the underlying request, AT&T raises a few issues with the proposed implementation of the relief that AT&T requests the Commission consider in any eventual rulemaking.

Petitioners propose that the rules governing price cap carrier provision of BDS be made applicable to any ACAM carriers that opt into such treatment and that going forward these ACAM carriers would operate based on the competitive or non-competitive classification of the county where they serve.⁴ However, Petitioners request certain aspects of their rate-of-return status be carried forward. First, Petitioners propose a waiver from the "all-or-nothing" rule, which would otherwise require a carrier electing price cap regulation to move both switched and special access from rate-of-return to price cap at the same time, and that electing ACAM carriers

¹ The petition defines these "model-based" rate-of-return carriers as those either electing to receive broadband-only universal service support pursuant to amounts specified in the Alternative-Connect America Fund Cost Model (ACAM) to support broadband and voice services or are otherwise affiliated with price cap carriers and receive support based on the Connect America Cost Model (CACM) or reverse auctions. (hereinafter "ACAM Carriers") Pet. at 2.

² *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, *et al.*, Report & Order, FCC 17-43 (rel. April 28, 2017).

³ Pet. at 3.

⁴ Pet. at 11. Petitioners assert that the same competitive market characteristics exist for rate-of-return carriers providing BDS as are applicable to price cap provision of BDS (*id.* at 2) however the "regulatory paradigm selected may be governed by somewhat different public interest considerations." *Id.* at 9.

remain subject to rate-of-return for all purposes except BDS regulation.⁵ Second, even though Petitioners argue that, consistent with all conversions from rate-of-return to price cap, the going-in rates should be the then-existing tariffed rates⁶ they recommend a one-time unfreeze of the separations factors in establishing these going-in rates.⁷

- **“All-or-nothing.”** Any ACAM carrier electing the price cap regime for BDS should accept the price cap regime for all its services. Petitioners acknowledge that the “all-or-nothing” rule was adopted to prevent gaming⁸ yet they argue that gaming is not possible in today’s regulatory environment because terminating switched access and intercarrier compensation rates are capped and are being phased out; originating switched access and intercarrier compensation rates are capped; and consumer broadband services are largely deregulated.⁹ However, the Petition also acknowledges that the Commission established separate transition mechanisms for rate-of-return carriers and price cap carriers,¹⁰ with the transition for price cap carriers nearly complete, while the transition for rate-of-return carriers is still underway (“past the mid-point”).¹¹ While it is true that the rates for originating switched access for rate-of-return carriers have been capped and that their terminating switched access end office services are transitioning to “bill and keep”, rate of return carriers’ terminating switched access transport is not reformed and remains under the rate of return regime.¹² Allowing the ACAM carriers to remain under rate of return for some services while transitioning to price cap for others could skew incentives and unnecessarily complicate the annual review process. Therefore, AT&T requests that the Commission decline to waive the “all-or-nothing” rule for these carriers and request comment on the best way to implement their full transition to the price cap regime in any forthcoming Notice of Proposed Rulemaking.
- **One-time unfreezing of the separations factors.** AT&T believes that any one-time unfreeze of the separations factors must be subject to comment from interested parties. While Petitioners acknowledge that any rate adjustments would be subject to Bureau review, AT&T requests that the Commission make it clear that interested parties will have the opportunity to comment on any one-time adjustments to the separations factors.

Thank you for your attention to this matter.

Very truly yours,

/s/ Keith M. Krom

⁵ Pet. at 16.

⁶ Pet. at 14.

⁷ Pet. at 15.

⁸ Pet. at 16.

⁹ Pet. at 16. Petitioners also assert that since USF support is no longer cost based for ACAM carriers, the idea that carriers could shift costs no longer applies. *Id.* at 17.

¹⁰ Pet. at 12

¹¹ Pet. at 13.

¹² *Connect America Fund*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 801-805 (2011), *pet. for rev. denied*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert denied*, *United States Cellular Corp. v. FCC*, 135 S. Ct. 2072 (2015).