

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Business Data Services in an Internet	)	WC Docket No. 16-143
Protocol Environment	)	
	)	
Special Access for Price Cap Local	)	WC Docket No. 05-25
Exchange Carriers	)	

**MOTION FOR EXTENSION OF TIME**

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July 19, 2016

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The National Cable & Telecommunications Association (NCTA), United States Telecom Association (USTelecom), and ITTA – The Voice of Mid-Size Communications Companies (ITTA)<sup>1</sup> (collectively Petitioners) submit this Motion for Extension of Time to request that the deadline to file reply comments in the above-referenced proceeding be extended by 21 days. For the reasons explained below, the requested extension will ultimately benefit the Commission by allowing it to more fully consider the many proposals advocated in the opening comments, without any corresponding harm or undue delay.

**INTRODUCTION AND EXECUTIVE SUMMARY**

A brief extension of time for the parties in this proceeding to submit reply comments is warranted given the challenges presented by replying to voluminous comments in this complicated and extremely consequential rulemaking, and it will ultimately assist the Commission in its ability to weigh carefully the relevant important and competing concerns. The opening comments are both voluminous and complex, and in a number of cases are accompanied by substantial independent economic analysis. In addition, shortly before comments were filed,

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<sup>1</sup> ITTA joins this Motion on behalf of its member companies who will be filing reply comments in the above-referenced proceeding.

Verizon and INCOMPAS submitted a proposed framework for regulation which the Commission has signaled may be a starting point for a negotiated solution that potentially could include our members.<sup>2</sup> It is a time-consuming process to analyze those materials and to review, consider, and respond to the various comments and to the Verizon/INCOMPAS proposal in the very brief period provided by the Commission. Granting Petitioners' request would allow for a more rigorous and considered debate on the various proposals, which will ultimately aid the Commission.

Moreover, in addition to the comments on the *Further Notice* and the competing proposals submitted by the numerous parties, on the very same day that comments were filed the Commission released the required peer reviews of Dr. Rysman's report, as well as the staff's response to those reviews, providing additional analysis that the parties must take into account.<sup>3</sup> Roughly two weeks later, on July 8, the Commission released an updated version of the staff response. Dr. Rysman's report is fundamental to the Commission's proposed regulations, and a thorough review of these peer reviews and staff response is essential.

Finally, NCTA and others have experienced delay in obtaining access for its outside experts to the 2013 data that forms the basis for much of the analysis in the record. NCTA's economists filed the requisite acknowledgments for access with the Commission on June 21, yet due to a backlog of requests at NORC, obtained access to the data only at the end of the day on July 14. The delay will make it exceedingly difficult for these economists to analyze the data in

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<sup>2</sup> *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Letter from Kathleen Grillo, Senior Vice President, Public Policy and Government Affairs, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS, to Marlene H. Dortch, Secretary, FCC (June 27, 2016) ("Verizon/INCOMPAS Letter").

<sup>3</sup> *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Public Notice, Wireline Competition Bureau Releases Peer Review Materials in Business Data Services (Special Access) Rulemaking Proceeding, DA 16-728 (rel. June 28, 2016).

connection with developing our response to proposals contained in the comments. For all of these reasons, the Commission should grant the brief extension requested by Petitioners.<sup>4</sup>

**I. THE VOLUME AND COMPLEXITY OF COMMENTS ON THE *FURTHER NOTICE CALL FOR MODIFICATION OF THE CURRENT SCHEDULE.***

As the Commission recently recognized in the context of its broadband privacy proceeding, a voluminous record provides a strong basis for granting additional time for reply comments.<sup>5</sup> Given that the Commission granted that extension in the absence of any party submitting a request, that same factor clearly warrants the brief extension that is being requested by Petitioners, whose companies are most affected by the proposed rules in this proceeding. The comments submitted on June 28 (by over 40 parties and totaling over 1,000 pages) are themselves voluminous and require thoughtful consideration. A number of the comments, moreover, were accompanied by independent economic analysis further critiquing the proposed regulations, as well as business declarations relating to various providers' experiences in the BDS market. To take one example, Sprint's opening comments alone consisted of 97 pages of argument, two lengthy economists' reports, and three separate business declarations.<sup>6</sup> Other providers' comments are similarly voluminous.<sup>7</sup> Analyzing and responding to these various filings with any rigor simply requires more time than the current schedule permits, especially

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<sup>4</sup> Because additional developments since the denial of NCTA's earlier extension request now provide additional reasons that weigh heavily in favor of altering the pleading schedule, this motion is not foreclosed by the reasoning of the Commission's June 8 Order denying that request. Indeed, in that Order, the Commission explicitly left open the possibility of extending the time for submitting replies, remarking only that an extension with respect to reply comments was not warranted "at [that] time." *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Order (rel. June 8, 2016) ("June 8 Order").

<sup>5</sup> *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, Public Notice, Wireline Competition Bureau Extends Deadline for Filing Reply Comments in the Broadband Privacy Proceeding, DA 16-712 (rel. June 22, 2016).

<sup>6</sup> See generally Comments of Sprint Corporation (June 28, 2016).

<sup>7</sup> See, e.g., Comments of AT&T (June 28, 2016); Joint Comments of CenturyLink, Inc., Consolidated Communications, FairPoint Communications, Inc., and Frontier Communications, Corp. (June 28, 2016); Joint Comments of Birch, EarthLink, and Level 3 (June 28, 2016).

given that trade associations, like Petitioners, must canvass their membership to develop a response and must allow time for member review before submitting it.

Fully grappling with these comments, and understanding the implications of their numerous proposals, is critical to providing meaningful feedback on the *Further Notice*, particularly given that the rules the Commission adopts could fundamentally alter the regulatory regime under which Petitioners' members provide BDS. The fact that this proceeding has been in progress for many years does not lessen the burden of reviewing the recently filed comments and consulting with the necessary business units to understand how the parties' positions would affect the marketplace, much less reduce the time to actually draft and review what are likely to be lengthy reply comments.

Furthermore, beyond the comments themselves, Petitioners and their members have a significant interest in the proposal advanced by Verizon and INCOMPAS just before the comments were filed.<sup>8</sup> Consistent with Commissioner Clyburn's suggestion that "an ideal outcome is one in which the industry comes together and proposes a solution that ensures the policy goals are realized,"<sup>9</sup> we are actively considering how best to respond to that proposal in a manner that moves in the direction of developing a true industrywide consensus proposal. It therefore would be wise for the Commission to provide all parties sufficient time to develop a meaningful response to that proposal while also working on reply comments. The brief extension requested here would achieve that objective.

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<sup>8</sup> See Verizon/INCOMPAS Letter at 2-3.

<sup>9</sup> *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Tariff Investigation Order and Further Notice of Proposed Rulemaking, Statement of Commissioner Mignon Clyburn at 2, FCC 16-54 (rel. May 2, 2016).

## **II. RECENTLY AVAILABLE PEER REVIEWS OF DR. RYSMAN'S REPORT REQUIRE ADDITIONAL ANALYSIS.**

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Although the complexity of the *Further Notice* and numerous detailed comments are enough to justify the requested brief extension of time, parties in this proceeding also are faced with evaluating the peer reviews of Dr. Rysman's report, on which the *Further Notice* largely bases its conclusions. These reviews, and the lengthy response from Commission staff, were released only on June 28, at a time when Petitioners and their members were just beginning to evaluate the comments and marshalling facts for their replies. The staff response was then updated on July 8. Analyzing this additional technical analysis further adds to the burden of responding by July 26, and the timing of the release itself justifies the requested extension of time.

While it has been impossible for Petitioners to fully consider the peer reviews given the available time, it is clear that they raise significant concerns regarding the validity of Dr. Rysman's analysis. Understanding and responding to those concerns is a fundamental part of the rulemaking process, and the Commission should be eager to give parties the opportunity to provide well-informed responses, which will aid the Commission's decisionmaking when formulating final rules. The benefits of providing a modest amount of additional time far outweigh the cost, if any, of such a brief delay.

## **III. DELAYS IN NCTA'S ABILITY TO ACCESS THE NECESSARY DATA HAVE UNDERMINED PARTIES' ABILITY TO PROVIDE A COMPLETE RESPONSE.**

Petitioners have been diligently working to analyze the Commission's proposals since they were released on May 2, but delays in obtaining data through NORC have hindered NCTA's efforts. On June 21, NCTA timely filed Acknowledgments of Confidentiality under the Protective Orders on behalf of its economists. And as soon as the mandatory waiting period for objections passed, NCTA's economists requested access to data from NORC. Notwithstanding

multiple inquiries, NORC was unable to create accounts and provide the necessary access to information until the end of the day on July 14, leaving less than two weeks to analyze the raw data. Thus, NCTA lost significant time from an already truncated work period. Given that the delays were caused by a backlog of requests for new accounts, presumably other parties are facing similar delays.<sup>10</sup> Although Petitioners believe the 2013 data substantially understates the level of competition in the marketplace, many of the comments rely on analysis of the 2013 data and the remaining time is insufficient to provide the thorough review these comments deserve.

#### **IV. THE REQUESTED EXTENSION OF TIME WILL CAUSE NO MEANINGFUL HARM.**

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While the justifications for additional time for the parties to submit reply comments in this proceeding are strong, granting Petitioners' request will cause no corresponding harm. At this stage in the proceeding, it is not credible to suggest that a three-week extension could meaningfully harm any party or the public, nor is it plausible to suggest that it would interfere with Chairman Wheeler's interest in resolving the proceeding by the end of the year. While Petitioners understand that certain parties may be frustrated with the long history of this proceeding, that frustration, in and of itself, is no reason to rush toward final rules without a full exploration of the impact of the Commission's proposals or the negotiated proposals submitted by other parties. Rather than cling to a pleading cycle that plainly is inadequate, it would be far preferable, and would benefit the Commission and consumers, to grant Petitioners' request, allowing Petitioners and their members to more fully give voice to positions that ultimately will help improve the final rules adopted by the Commission.

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<sup>10</sup> NORC explained that the delay was caused by a "queue of accounts to be created," which suggests that other parties in this proceeding are facing similar delays.

## **CONCLUSION**

For the foregoing reasons, NCTA and USTelecom respectfully request that the Commission extend the deadline for filing of reply comments by 21 days.

Respectfully submitted,

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