Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
Business Data Services in an Internet Protocol Environment	)	WC Docket No. 16-143
Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans	)	WC Docket No. 15-247
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

REPLY COMMENTS OF CROWN CASTLE

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REPLY COMMENTS OF CROWN CASTLE

I. INTRODUCTION AND SUMMARY

Crown Castle[1] hereby submits these reply comments in response to the *FNPRM*.[2] Founded in 1994, Crown Castle is the country's largest independent owner and operator of shared wireless infrastructure, with more than 40,000 towers. In addition, Crown Castle deploys and operates small cell networks designed to facilitate wireless connectivity and supported by over 17,000 miles of fiber.

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[1] Crown Castle is Crown Castle International Corp. (CCI:NYSE) and its subsidiaries.

[2] *Business Data Services in an Internet Protocol Environment*, Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, ¶ 5 (2016) ("*FNPRM*").

Crown Castle applauds efforts by the Commission to "remove barriers" to new technologies and to facilitate deployment of 5G "high bandwidth wireless services."[3] With the technological changes in the wireless industry and increased consumer demand for mobile solutions, Crown Castle believes significant opportunities exist for expanding infrastructure and communications services in the United States – an expansion that would benefit both the economy and the broadband ecosystem.

However, whether network operators deploy the facilities necessary to capitalize on these opportunities largely depends on their ability to earn a reasonable return on their network investments. Unfortunately, commenters that support Commission regulation of the rates charged by competing business data service ("BDS") providers completely ignore or merely pay lip service to this critical investment dynamic. As the record makes clear, rate regulation would be antithetical to the Commission's goal of promoting network investment by competing providers and thereby increasing competitive alternatives for BDS. Furthermore, commenters offer no legal or economic theory that would justify regulating the BDS rates of a competing provider – a void that cannot be filled in the name of "technological neutrality" or a desire for "administrative ease."[4]

If the Commission is nonetheless intent on imposing rate regulation on competing providers of BDS in so-called "noncompetitive" markets, however defined, Crown Castle agrees with commenters that the Commission should exempt services for which sufficient competitive safeguards already exist – specifically, wireless backhaul and E-rate eligible services. Wireless

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[3] *FNPRM* ¶¶ 5 & 7.

[4] *See, e.g.*, Comments of NASUCA and the Maryland People's Counsel, WC Docket 16-143, at 11 (filed June 28, 2016); Comments of Sprint Corporation, WC Docket 16-143, at 77 (filed June 28, 2016) ("Sprint Comments"); Comments of Public Knowledge et al., WC Docket 16-143, at 5 (filed June 28, 2016); Comments of INCOMPAS, WC Docket 16-143, at 6 (filed June 28, 2016) ("INCOMPAS Comments").

backhaul is a vibrantly competitive marketplace, and carriers seeking backhaul from a tower or small cell routinely conduct a rigorous RFP process to identify competitive alternatives. Competing providers such as Crown Castle must successfully navigate this process in order to win wireless backhaul business, which inevitably requires offering a more cost-effective or higher quality solution than other competitors, not the least of which is the incumbent telephone company that can leverage its ubiquitous telephone network to provide BDS anywhere in its service territory. Regulating the rates that a competing provider can offer to provide wireless backhaul services under such circumstances is unnecessary and would be counter-productive.

The same is true for BDS offered to schools and libraries participating in the E-rate program. Under the Commission's rules, E-rate eligible services are subject to stringent competitive bidding requirements, and an applicant seeking E-rate funding must demonstrate that it has selected the most cost-effective service offering. E-rate applicants also are protected by the Commission's lowest corresponding price ("LCP") rule, which requires providers of E-rate services to charge no more than the lowest price paid by similarly situated customers in their geographic service area for "similar services."[5] These procedural mechanisms – in conjunction with other safeguards that apply to the E-rate services market – obviate any need for prescriptive rate regulation of E-rate eligible business data services offered by competing providers.

Crown Castle also agrees with commenters that BDS at a capacity of 1 gigabit per second ("Gbps") or more should be deemed *per se* competitive and therefore exempt from any regulatory regime. Given the abundant evidence in the record that competitors have sufficient economic incentive to provide high-capacity services to business customers, no valid purpose would be served in subjecting such services to regulation.

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[5] 47 C.F.R. § 54.511(b); *see also* 47 C.F.R. § 54.500(f).

Finally, the Commission should decline to extend to competing carriers any prohibitions on contractual terms and conditions to which they may voluntarily agree with their business customers. As the record demonstrates, contractual arrangements between competing providers and their customers are the result of individual negotiations between sophisticated parties and are not unilaterally imposed in a tariff. Furthermore, a competing provider lacks any ability to compel a business customer to accept terms and conditions that are uneconomic or that may otherwise undermine competition. Accordingly, the purported rationale for regulating contractual terms and conditions of competing providers is lacking, and such regulation would suppress, rather than foster, competition for BDS.

II. DISCUSSION

A. Regulation of Competing Providers' Rates Would Undermine Network Infrastructure Investment.

Crown Castle agrees with numerous commenters that correctly observe that subjecting competing providers to rate regulation would discourage the infrastructure investments necessary to provide competing BDS.[6] The notion that rate regulation would deter investment is well established as a matter of economic theory[7] and market reality.[8] Indeed, it cannot be seriously

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[6] *See, e.g.,* Comments of the American Cable Association, WC Docket 16-143, at 25 (filed June 28, 2016) ("Subjecting such a competitive provider, whether a cable provider or not, to such rules, including price regulation, would discourage it from undertaking investments needed to upgrade and expand its infrastructure to provide BDS") ("ACA Comments"); Comments of Charter Communications, WC Docket 16-143, at 21 (filed June 28, 2016) ("Charter Comments"); Comments of Comcast Corp., WC Docket 16-143, at 2 (filed June 28, 2016) ("The inevitable result [of regulating competing providers' rates] would be a severe disincentive to entry and investment that would powerfully undercut the Commission's avowed interest in promoting increased competition and the downstream benefits it entails") ("Comcast Comments"); Comments of the Free State Foundation, WC Docket 16-143, at 2 (filed June 28, 2016).

[7] *See, e.g.,* Comcast Comments, Exhibit A - Declaration of Joseph Farrell, DPHIL, Professor of Economics, University of California, Berkeley, ¶¶ 86-114 (concluding that price regulation would slow competitive entry as well as the introduction of new technologies);

disputed that rate regulation would make otherwise attractive infrastructure projects financially less appealing by introducing regulatory risk and reducing revenue opportunities for a competing provider.[9]

The negative effects of regulating the rates of competing providers is even more troubling given the "need for higher-capacity backhaul connections to cell cites" with the advent of 5G

(footnote cont'd.)
Comcast Comments, Exhibit B – Declaration of John W. Mayo, Ph.D., Professor of Economics, Business and Public Policy, McDonough School of Business at Georgetown University, ¶ 2 ("The potential extension of price cap regulation to all providers in the BDS marketplace has no basis in accepted economic theory" and "would significantly threaten supply in the marketplace, preclude consumer choice, decelerate investment, and lower the quality of products and services"); *see also id*. ¶¶ 80-94.

[8] *See, e.g.*, Comcast Comments, Exhibit D - Declaration of Bill Stemper, ¶ 7; Comcast Comments, Exhibit F - Declaration of Devesh Raj, ¶¶ 11–12; Comments of Cox Communications, WC Docket 16-143, Declaration of Jeremy Bye and Larry Steelman, ¶¶ 16-20 (filed June 28, 2016); Comments of Lightower Fiber Networks I, LLC, Lightower Fiber Networks II, LLC, and Fiber Technologies Networks, LLC, WC Docket 16-143, Declaration of Eric Sandman, ¶¶ 7-25 (filed June 28, 2016) ("Lightower Comments").

[9] *See* Comments of the National Cable & Telecommunications Ass'n, WC Docket 16-143, at 17 (filed June 28, 2016) (noting that "regulation deters investment in vital communications services because '[m]any entrepreneurs may simply choose to invest their funds in other areas of the economy rather than subject themselves to the risks and costs of being regulated'") (quoting *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Further Notice of Proposed Rulemaking, 84 FCC 2d 445 ¶ 23 (1981)) ("NCTA Comments"); Comments of Mediacom Communications, WC Docket 16-143, at 11 (filed June 28, 2016) ("New rate regulations would not lead to greater competition, but in fact would be more likely to reduce competition and force competitors like Mediacom to consider whether further investments in these markets is sustainable") ("Mediacom Comments"); *see also* Wright S., Mason, R., & Miles, D., "A Study into Certain Aspects of the Cost of Capital for Regulated Utilities in the U.K." (Feb. 13, 2003), https://www.ofgem.gov.uk/ofgem-publications/50794/2198-jointregscoc.pdf (concluding that the cost of capital is higher under price cap regulation than for unregulated firms); Aron, D., and Crandall, R., *Investment in Next Generation Networks and Wholesale Telecommunications Regulation*, at 23 (Nov. 3, 2008), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1294910 ("The prospect of making large investments in assets that could be subject to regulatory pricing mechanisms, and the associated prospect of regulator-set prices that may not be fully compensatory, would certainly discourage a company from making the investment to begin with").

wireless services and the explosive demand for mobile data.[10] Numerous competing providers, including Crown Castle, are poised to meet this need by deploying networks to provide wireless carriers with backhaul to support next generation mobile services.[11] However, why would a competing provider make such deployments in "noncompetitive" markets when its rates would be subject to regulation?[12]

Commenters that endorse rate regulation of competing providers of BDS in so-called "noncompetitive" markets do not explain how such regulation would facilitate network investment or promote competitive alternatives. Instead, they ignore the issue or insist that investment incentives should be preserved without explaining how that objective could reasonably be achieved under their proposed prescriptive regulatory regime.[13]

Nor do commenters articulate a cognizable legal theory that would support regulating a competing provider's rates. Sprint's claim that regulation of competing providers' rates would "build upon modern and well-established means of regulating telecommunications prices" under

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[10] *FNPRM* ¶¶ 5 & 78.

[11] *See, e.g.*, Lightower Comments at 23; Charter Comments, Declaration of Phil Meeks, ¶ 6.

[12] Indeed, even proponents of rate regulation of BDS acknowledge the harms resulting from the rate regulation of competing providers. *See, e.g.*, Joint Comments of Birch Communications, Inc., EarthLink, Inc., and Level 3 Communications, LLC, WC Docket 16-143, at 59-60 (filed June 28, 2016) ("Forcing non-dominant competitors to charge prices based in some way on the incumbent LEC's costs could therefore cause the non-dominant competitor to charge prices that are below its costs" and "harm competition by forcing the non-leading competitor to withdraw from the market") ("CLEC Comments").

[13] *See, e.g.*, Sprint Comments at 66 (failing to address the prospect of investment by competing providers in markets subject to Sprint's proposed "safe harbor mechanism," which would involve "a one-time 20 percent reduction to 2016 rates" and subsequent 4.4 percent annual reductions "going forward"); INCOMPAS Comments at 9-10; Comments of Verizon, WC Docket 16-143, at 1 & 22-23 (filed June 28, 2016) (failing to explain how the Commission should "promote investment and foster market entry by facilities-based providers," when, under Verizon's proposal, a new entrant's rates in noncompetitive markets would be benchmarked to incumbent provider rates, which would be subject to "a one-time, across-the-board reduction" and periodic downward adjustments thereafter).

47 U.S.C. § 201(b) is inaccurate.[14] This claim cannot be reconciled with Commission precedent that a provider without market power lacks any ability to impose a rate that conceivably could run afoul of Section 201(b).[15] Here, there is no evidence in the record that any competing BDS providers have market power or are charging "unjust and unreasonable" rates. Thus, even assuming a competing BDS provider could lawfully be compelled to offer service on a common carriage basis, which Crown Castle does not agree is the case,[16] Section 201(b) would not authorize the Commission to adopt prescriptive rate regulation of competing providers' BDS.

B. Wireless Backhaul, E-Rate Eligible Services, And Services Offering Capacity At Or Above 1 Gbps Should Be Exempt From Any Regulation Of Competing Providers' BDS Rates.

Crown Castle agrees with commenters that, in the event the Commission prescribes rates for BDS offered by competing providers in noncompetitive markets, services for which providers cannot unilaterally dictate prices should be exempt from such regulation, specifically, wireless backhaul and E-rate eligible services. In addition, services offering capacity of 1 Gbps or more should be deemed competitive and therefore exempt from any regulatory regime.

As various commenters correctly point out, the market for wireless backhaul services is robustly competitive, with wireless carriers utilizing RFPs, rather than engaging in individual

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[14] Sprint Comments at 90-91.

[15] *See Competitive Common Carrier Services (Classification of Carriers)*, First Report and Order, 85 FCC 2d 1, ¶ 51 (1980) (predicting "with confidence that the rates charged by non-dominant carriers will be 'just and reasonable' within the meaning of the Communications Act ..."); *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, ¶¶ 139-42 (1995) (removing price cap regulation for AT&T's domestic, interexchange telecommunications services because of AT&T's lack of "market power"). *Cf. Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Opinion, 16 FCC Rcd 9923, ¶¶ 30-38 (2001) (imposing rate regulation on switched access charges of competing local exchange carriers that the Commission found to have "market power" over terminating access service by virtue of their "bottleneck monopolies").

[16] *See, e.g.*, Comcast Comments at 61-71; Charter Comments at 17.

negotiations, in order to obtain the most advantageous pricing for backhaul.[17] The prevalence of competitive bidding for wireless backhaul services conducted by large, sophisticated carriers through the use of an RFP ensures competitive rates, without the need for prescriptive rate regulation. Furthermore, wireless carriers inevitably have numerous competitive options from which to choose in selecting the most cost-effective backhaul option.[18] And, wireless carriers always have the "resources and expertise to build their own backhaul facilities," which further serves to constrain backhaul prices.[19]

Even in smaller, more rural markets, a competitor must successfully challenge the incumbent telephone company in order to secure a contract to provide backhaul services to a wireless carrier. In this circumstance, the competing provider must either beat the incumbent's price or offer a higher quality service for which the wireless carrier is willing to pay more.[20] In either case, the Commission should encourage a competing provider to provide wireless carriers with a competitive alternative to the incumbent telephone company – a goal that would be

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[17] *See, e.g.*, Cox Comments at 19-21; Charter Comments at 10-11 ("Charter's largest BDS customers, purchasers of wireless backhaul, are sophisticated, typically seeking multiple bidders on requests for proposals that contain strict pricing constraints, making it impossible for Charter to dictate terms"); Mediacom Comments at 5; NCTA Comments at 9-10; Comments of ITTA, WC Docket 16-143, at 20-21 (filed June 28, 2016).

[18] *See* Lightower Comments, Declaration of Eric Sandman, ¶ 7 (noting the number of locations served by Lightower where the customer had four or more competitive option and locations where the customer could choose among at least three competitors).

[19] *See* NCTA Comments at vii (noting that wireless carriers "have already informed their investors that they can profitably roll out 5G without reliance upon other carriers' regulated BDS").

[20] *See* Lightower Comments, Declaration of Eric Sandman, ¶¶ 7-8.

thwarted unless the wireless backhaul services provided by competing providers are exempted from any BDS rate regulations.[21]

The same is true for BDS offered by competing providers to schools and libraries under the E-rate program, which imposes rigorous competitive bidding requirements on applicants seeking E-rate funding.[22] Although these requirements have evolved, the basic structure of the E-rate competitive bidding process has remained generally the same to ensure that applicants seek competitive bids for supported services and select the most cost-effective bid.[23] Additionally, the goal of the rules has remained unchanged: to direct applicants "to take full advantage of the competitive market to ensure that schools and libraries obtain cost-effective services and to minimize waste, fraud, and abuse."[24]

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[21] *See* Comments of the Rural Wireless Association, WC Docket 16-143, at 2-3 (filed June 28, 2016) ("wireless carriers serving rural areas in need of backhaul services are limited in choice to large incumbent price cap carriers" because there are "fewer competitive carriers" willing to serve "rural and remote areas"); Comments of the Computer & Communications Industry Association, WC Docket 16-143, at 4 (filed June 28, 2016) (asserting a "lack of competition" in the wireless backhaul marketplace, which "has the potential to delay the deployment of 5G networks"); Comments of NTCH, WC Docket 16-143, at 1-2 (filed June 28, 2016).

[22] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) ("*Universal Service First Report and Order*").

[23] *See, e.g.*, 47 C.F.R. §§ 54.503, 54.511(a).

[24] *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, Order, 18 FCC Rcd 26407, ¶ 2 (2003) ("*Ysleta Order*"); *see also Federal-State Joint Board on Universal Service*, Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, ¶ 185 (1997) ("The competitive bidding process is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates") ("*Fourth Order on Reconsideration*").

By virtue of an applicant having to submit FCC Form 470, which describes the desired services with sufficient specificity to enable potential service providers to submit bids,[25] to conduct a "fair and open" competitive bidding process,[26] and to select the most "cost-effective service offering,"[27] the Commission has put in place procedural safeguards which ensure that a school or library obtains E-rate eligible BDS at competitive rates. Furthermore, the LCP, which requires providers of E-rate services to offer eligible institutions the lowest price that they offer "similarly situated" non-residential customers in their geographic service area for "similar services," ensures that schools and libraries receive the benefit of competition even when competitive alternatives may be lacking.[28] Thus, Crown Castle agrees with commenters that BDS offered to schools and libraries participating in the E-rate program should not be subject to rate regulation.[29]

Competing providers also should be exempt from regulation when offering BDS at capacity of 1 Gbps or more. The record is clear that competing providers have sufficient economic incentive to deploy the facilities required for high bandwidth services, and thus these

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[25] *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.*, Order, 16 FCC Rcd 4028, ¶ 4 (2000); *Universal Service First Report and Order* at I-25-26; 47 C.F.R. § 54.503(c)(2); *see also Request for Review by the State of Tennessee of the Decision of the Universal Service Administrator*, Order, 14 FCC Rcd 13734, ¶ 3 (1999); 47 C.F.R. § 54.503(c)(i), (ii).

[26] *Schools and Libraries Universal Service Support Mechanism*, Sixth Report and Order, 25 FCC Rcd 18762, ¶¶ 85-86 (2010).

[27] 47 C.F.R. § 54.511(a). Although an applicant may consider relevant factors other than price, "in selecting the winning bid, price must be given more weight than any other single factor." *Ysleta Order* ¶ 50; *see also* 47 C.F.R. § 54.511(a).

[28] 47 C.F.R. § 54.500(f); *id.* § 54.511(b); *Universal Service First Report and Order*, ¶484; *Fourth Order on Reconsideration*, ¶ 133.

[29] *See, e.g.*, Comments of the Fiber to the Home Council, WC Docket 16-143, at 17 (filed June 28, 2016); Mediacom Comments at 5.

services can be competitively supplied.[30] Indeed, as the Commission correctly observed, "competitive entry and potential competition are bringing material competitive benefits ... to some products (most notably high bandwidth services)."[31] Given the Commission's view that "competition is best" and that regulation is only appropriate "where competition does not exist,"[32] no justification exists for extending regulation to high capacity services offering capacity of 1 Gbps or more. Such regulation could hamper the competitive marketplace without offering any cognizable benefit.[33] Crown Castle therefore agrees with commenters that the Commission should deem BDS with capacity of 1 Gbps or more *per se* competitive and decline any invitation to regulate such services.[34]

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[30] Verizon Comments at 8 ("At very high bandwidths, Business Data Services can be competitively supplied in all instances because of the significant revenue opportunities these services offer."); CLEC Comments at 7 (explaining that "competitive carriers can generally deploy a connection to serve a customer that demands Business Data Services of greater than one Gbps"); INCOMPAS Comments at 7 ("It would also be reasonable for the Commission to infer that a reasonably efficient competitor can often efficiently deploy connections to locations where the customer demands Business Data Services above a Gigabit of capacity."); Letter from Kathleen Grillo, Senior Vice President of Public Policy and Government Affairs, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-143, at 2 (filed June 27, 2016) ("Verizon/INCOMPAS Letter") (urging the Commission to deem all services above 1 Gbps competitive in light of "the greater economic incentives to build out very high capacity circuits").

[31] *FNPRM* ¶ 3; *see also id.* ¶ 164 ("… to the extent that the future is with fiber, this finding could bode well for future competition in this industry, at least for high value BDS, such as high bandwidth services") (quoting analysis of Dr. Marc Rysman).

[32] *FNPRM* ¶ 5.

[33] *See, e.g., Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, ¶ 2 (2005) (declining to adopt unbundling rules that would "frustrate sustainable, facilities-based competition" because of the need to "provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market in the way that best allows for innovation and sustainable competition").

[34] Verizon Comments at 9; Birch, EarthLink, and Level 3 Comments at 7; INCOMPAS Comments at 6; Verizon/INCOMPAS Letter at 2; Comments of Zayo Group, LLC, WC Docket 16-143, at 6 (filed June 28, 2016). Crown Castle recognizes that the "new framework" proposed by Verizon and INCOMPAS contemplates that "all services *above 1 Gbps* would be deemed

C. **Competing Providers Should Not Be Subject To Restrictions On Contractual Terms and Conditions.**

The *FNPRM* asks whether the Commission's decision to ban certain tariff terms and conditions employed by incumbent carriers should be extended to commercial agreements for BDS offered by competing providers.[35] Crown Castle agrees with commenters that this approach would be misguided. As with rate regulation, restricting the use of certain contract terms and conditions by competing carriers would frustrate the Commission's goal of promoting BDS competition.

In determining that certain terms and conditions in tariff pricing plans of incumbent carriers were unjust and unreasonable, the Commission found that incumbents had unilaterally imposed requirements on competing providers "that constrained their ability to compete in the business data services marketplace and inhibited their transition to IP technologies."[36] In eliminating these tariff provisions, the Commission sought to "give tariff customers a greater degree of flexibility to control their purchases" and to "enhance competitive LECs' ability to respond to the changing nature of the business data services market …."[37]

The Commission's reasoning for regulating incumbent tariff provisions is inapplicable to the contractual arrangements of competing providers. First, in contrast to incumbent tariffs, commercial agreements between competing providers and their customers are individually

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(footnote cont'd.)
competitive." *See* Ex Parte Letter from Kathleen Grillo, Senior Vice President – Public Policy and Government Affairs, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS, WC Docket No. 16-143, at 2 (June 27, 2016) (emphasis added). However, there would be no justification for excluding from this proposed framework a service that offers capacity of 1 Gbps, rather than capacity just "above" 1 Gbps.

[35] *FNPRM*, ¶ 321.

[36] *Business Data Services in an Internet Protocol Environment*, Tariff Investigation Order, 31 FCC Rcd 4723, ¶ 86 (2016) ("*Tariff Investigation Order*").

[37] *Id.* ¶ 87.

negotiated by sophisticated parties. Second, unlike incumbent carriers, competing providers have no ability to impose unilaterally any terms and conditions on their business customers and enjoy no leverage in the negotiation process. Third, in contrast to legacy TDM services offered by incumbent carriers, competing providers offer IP services, which they have every economic incentive to sell on mutually acceptable terms and conditions. In short, the evils that the Commission sought to address in its *Tariff Investigation Order* are absent in the context of competing providers.

Moreover, competition from incumbent carriers and others often compels competing providers to offer better terms than their competitors to secure business.[38] As a result, Crown Castle agrees that "[p]rohibitions on the use of particular terms and conditions could only reduce the tools available to buyers and sellers of BDS in competitive markets that could be used to develop innovative and mutually beneficial arrangements for BDS, and thus by definition could only undermine the implementation of the most customer-friendly arrangements."[39] Accordingly, the Commission should not limit the terms and conditions that competing providers can offer to their business customers, which would only harm their ability to supply competitive alternatives in the BDS market.

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[38] *See* ACA Comments at 6 ("[N]onincumbents need to offer better rates, terms, and conditions than ILECs to sign up commercial customers, who are generally sophisticated purchasers – and market evidence supports this conclusion").

[39] Comments of AT&T Inc., WC Docket No. 16-143, at 81 (filed June 28, 2016); *see also* NCTA Comments at 54 ("Forcing competitive carriers to provide their BDS at regulated rates and terms directly violates the purpose of the Act and Congress' goals to promote facilities-based competition").

III. CONCLUSION

To the extent any problem may exist with the competitiveness of the BDS market, regulating the rates of competing providers is not the solution to that problem. And, in the event the Commission elects to impose rate regulation on competing BDS providers, it should exempt wireless backhaul, E-rate eligible services, and services offering capacity of 1 Gbps or more from any such regulatory regime. Finally, the Commission should refrain from regulating the contractual terms and conditions that competing providers can offer their business customers.

Respectfully submitted,

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