



August 10, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication: WC Docket No. 17-144

Dear Ms. Dortch:

On August 8, 2018, Bob DeBroux of TDS Telecom, Ken Pfister of Great Plains Communications, Trey Judy of Hargray Communications, Mike Skrivan of Consolidated Communications, and Lynn Follansbee of USTelecom, along with Genny Morelli and the undersigned of ITTA, met with Kris Monteith, Eric Ralph, Arielle Roth, Pam Arluk, David Zesiger, Doug Slotten, Chris Koves, Justin Faulb, and Shane Taylor of the Wireline Competition Bureau regarding the Notice of Proposed Rulemaking in the above-referenced proceeding.¹

During the meeting, we addressed why there is no basis for the Commission's proposal to accord model-based rate-of-return carriers different treatment than the *Price Cap Order* did for price cap carriers with respect to TDM transport.² We asserted that there are numerous competing transport networks in the market, yet, unlike model-based rate-of-return carriers, none of these competitors are regulated. This competitive disparity hamstrings model-based rate-of-return carriers' ability to price transport appropriately to the competitive conditions in specific markets.

We also discussed the showings accompanying ITTA and USTelecom's comments on the *NPRM*,³ demonstrating the comparability of market conditions in areas of counties served by model-based rate-of-return carriers with the areas served by price cap carriers in these same counties. The Commission recognized in the *Price Cap Order* that there is "widespread competition in the market" for transport services,⁴ and that even if some census blocks did not have immediate competitive options, "greater harm—primarily manifested in the discouragement of competitive entry over time—would result if we were to attempt to regulate these cases than is

¹ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, Notice of Proposed Rulemaking, FCC 18-46 (Apr. 18, 2018) (*NPRM*).

² See *NPRM* at 8, para. 14.

³ See Comments of ITTA and USTelecom, WC Docket No. 17-144 (June 18, 2018).

⁴ *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd 3459, 3500, para. 90 (2017) (*Price Cap Order*).

expected under our deregulatory approach.”⁵ Eliminating disincentives to competition was considered so important, coupled with “sufficiently widespread” competition, that the Commission had “confidence that a combination of these factors will broadly protect against the risk of supracompetitive rates” in the short-to-medium term.⁶ The Commission concluded that “[r]efraining from pricing regulation for transport services nationally achieves the proper balance between precision and administrability.”⁷

This same nationwide analysis applies with equal force to model-based rate-of-return carrier TDM transport services. The Commission should make the same “reasonable assessment” and “appropriate[] balanc[ing of] the relative risks of under- and overregulation”⁸ of TDM transport provided by model-based rate-of-return carriers, and eliminate ex ante regulation of such carriers’ provision of TDM transport, just as it did with respect to price cap carriers.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs
Vice President, Regulatory Affairs

cc: Kris Monteith
Eric Ralph
Arielle Roth
Pam Arluk
David Zesiger
Doug Slotten
Chris Koves
Justin Faulb
Shane Taylor

⁵ *Id.* at 3501, para. 92. *See also* Public Brief for Respondents at 22, *Citizens Telecommunications Co. v. FCC*, Nos. 17-2296, 17-2342, 17-2344, 17-2685 (8th Cir. Nov. 17, 2017) (“In excluding legacy transport services from ex ante pricing regulation, the Commission made a reasonable assessment of the record and appropriately balanced the relative risks of under- and overregulation. The record is replete with evidence that competition for transport services, if not universal, is extremely widespread.”).

⁶ *Price Cap Order*, 32 FCC Rcd at 3502, para. 92.

⁷ *Id.* at para. 93.

⁸ Public Brief for Respondents, *supra* note 6, at 22.