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Ex Parte

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

Re: Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143; Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593

Dear Ms. Dortch:

On September 8, 2016, Curtis L. Groves, Fred Moacdieh, and I, all of Verizon, met with Eric Ralph (by phone), Deena Shetler, Pamela Arluk, David Zesiger, William Kehoe, Justin Faulb, and Christopher Koves of the Wireline Competition Bureau and William Dever of the Office of General Counsel to discuss these proceedings.

The Commission should adopt Verizon and INCOMPAS's proposed framework for Business Data Services.¹ Our administratively workable approach relies first on competition to ensure reasonably priced Business Data Services. And in areas where competition has been insufficient, we propose a policy framework that encourages investment and market entry. In the meeting we discussed Verizon's positions on several issues related to the Verizon and INCOMPAS joint proposal and to the proceeding.

Implementation Timeline: The “new start” the Commission has called for—including “discarding the traditional classification of ‘dominant’ and ‘non-dominant’ carriers” and replacing the “existing, fragmented regulatory BDS structure with a new technology-neutral framework that classifies markets as either competitive ... or as non-competitive”—will require

¹ See Letter from Kathleen Grillo, Verizon, and Chip Pickering, INCOMPAS, to Marlene H. Dortch, FCC, WC Docket Nos. 16-143, 05-25 & RM-10593 (filed Aug. 9, 2016) (“Verizon and INCOMPAS August 9 Letter”); Letter from Kathleen Grillo, Verizon, and Chip Pickering, INCOMPAS, to Marlene H. Dortch, FCC, WC Docket Nos. 16-143 & 05-25 (filed June 27, 2016); Letter from Kathleen Grillo, Verizon, and Chip Pickering, INCOMPAS, to Marlene H. Dortch, FCC, WC Docket Nos. 16-143 & 05-25 (filed Apr. 7, 2016).

some time for the industry to implement.² Providers will have to modify many of their systems—including ordering and billing systems—to accommodate many of the changes. Assuming the Commission adopts and releases an order later this year, we suggested a reasonable effective date of any changes should be no sooner than July 1, 2017, coincident with the annual tariff filings.

Five years ago, the Commission adopted a similar timeline when it reformed universal service and intercarrier compensation in the *Connect America Fund Order*.³ Cognizant of the many changes industry participants would have to make to comply with this November 2011 reform order, the Commission set an implementation deadline of July 1, 2012 for most of the major changes it adopted.

Here, while a July 1, 2017 deadline would be aggressive, Verizon suggests the Commission should align the deadline for implementing the major reforms with next year's annual filing. The annual filing is a natural demarcation point, given that many of the proposed reforms affect tariffed services and will materially affect the price-cap calculations and other required aspects of the annual filing. And providers will need many months to implement other changes to their systems to accommodate a reform order consistent with the *Business Data Services FNPRM* and with the Verizon and INCOMPAS joint proposal.

For example, Verizon and INCOMPAS have proposed analyzing competition by census blocks, and much of the analysis in the record is based on census blocks. The Commission, too, has said the geographic market is considerably smaller than the Metropolitan Statistical Areas upon which the current regulatory structure is based. And while a census-block based approach would be administratively manageable, the initial systems work to retrofit current systems like the industry-standard Carrier Access Billing System will require many months of work. In fact, a July 1, 2017 deadline likely is only feasible if the Commission releases a reform order well before the end of the year.

New Entrants: The benchmark approach to Ethernet we have proposed is consistent with the Commission's "four fundamental principles" for this proceeding.⁴ First, recognizing that "competition is best" and "[w]here competition exists, there is little for government to do except to maintain the traditional oversight of telecommunications services,"⁵ the benchmarks would not apply in competitive areas. Only areas deemed non-competitive would be subject to the benchmarks. Second, the benchmarks would be technology-neutral⁶ and would not just apply to ILEC Ethernet services. Third, because benchmarks are a light-touch approach—far less proscriptive than price caps and other antiquated dominant-carrier regulation—the benchmark

² *Business Data Services in an Internet Protocol Environment, et al*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, ¶¶ 4, 11 (2016) ("*Business Data Services FNPRM*" or "*Tariff Investigation Order*").

³ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*Connect America Fund Order*").

⁴ *Business Data Services FNPRM*, ¶ 4.

⁵ *Id.*, ¶ 5.

⁶ *See id.* ¶ 6.

approach will encourage technology transitions to IP-based, packet-switched services.⁷ And fourth, because we have proposed that new entrants should be exempt from the benchmarks for at least three years, the benchmarks work for today and the future, encouraging market entry.⁸

The Commission asked whether new entrants should be exempt from some rules under a new framework,⁹ and Verizon supports exempting new market entrants from the benchmark approach for a limited time. Allowing new entrants greater flexibility to set rates when they first enter a market will encourage investment and market entry. Verizon, both in its comments and in the Verizon and INCOMPAS August 9 Letter, has suggested the Commission could exempt new entrants at least until it reassesses market competition in approximately three years. Consistent, however, with the Commission's core goals for a "technology-neutral framework" that applies to all Business Data Services providers "depending on the classification of a specific market as competitive or non-competitive," the benchmarks eventually should apply to all providers.¹⁰ That said, a provider subject to the benchmarks should have an opportunity to petition for relief and show why benchmarks are unnecessary to ensure just and reasonable rates in a particular market.

Future Data Collection: The Verizon and INCOMPAS joint framework relies initially on the *2015 Collection* to determine competitive and non-competitive areas based on census blocks, with periodic updates of the data. If the Commission adopts the joint proposal, updates to refresh the results of the competitive market test can be substantially less burdensome than the comprehensive *2015 Collection*.¹¹ That data collection was a massive undertaking for the industry, and the Commission should not repeat it. For Verizon alone, approximately 50 people worked for almost six months to prepare the data submission, logging tens of thousands of hours.

Instead, the Commission should collect from all providers a list of census blocks in which the provider has an actual Business Data Service customer or Business Data Service connection served by facilities owned by that provider. This would include connections leased as IRUs but would not include customers served by unbundled network elements. The list should also include census blocks served by cable providers' own hybrid fiber-coaxial facilities that provision or are capable of provisioning Business Data Services.

The Commission does not have to collect all of the data it previously collected. For example, the Commission does not have to collect the billing, facility, revenue, or other data it collected in the *2015 Collection* to conduct the competitive market test we proposed. The Commission can administer and update the results of the competitive market test by summing the number of providers for each census block reported under this approach.

This data refresh should begin in 2018, with a collection of year-end 2017 data. The Commission then could collect these data annually or every three years, and it should analyze the data every three years. And while the Commission should collect data from all providers, it may

⁷ See *id.* ¶ 7.

⁸ See *id.* ¶ 8.

⁹ See *id.* ¶ 309.

¹⁰ See *id.* ¶ 260.

¹¹ See *id.* ¶ 36 (definition of "2015 Collection").

be reasonable to exempt providers with *de minimis* Business Data Services operations. Collecting annually is sensible because it is frequent enough for providers to operationalize the collection as a regular event, and with the limited data Verizon suggests collecting the burden would be manageable. Further, an annual collection mitigates against loss of institutional knowledge as personnel changes over time. Analyzing those data every three years also makes sense. Reviewing those designations every three years would give industry participants more marketplace stability and certainty as they make business decisions. More frequent analyses could result in more frequent changes to the regulatory designations of certain areas, creating uncertainty.

This limited data collection would limit the burden on the industry and on the Commission. The hours required to respond to a future data collection such as this would be only a fraction of the hours spent responding to the *2015 Collection*, and the substantially reduced burden of producing this limited data set from all providers would justify the corresponding benefits.

Terms and Conditions: While the Verizon and INCOMPAS framework addresses the core principles in the *Business Data Services FNPRM* and sets forth many specific policy proposals, we did not attempt to address all of the outstanding issues. One area the jointly proposed framework does not cover involves the terms and conditions under which providers offer Business Data Services. In the meeting Verizon explained its views on several of these related topics.

- The Commission should let individually negotiated agreements run their course, including contract tariffs for TDM-based special access in pricing-flexibility areas and agreements for Ethernet services. This allows both parties to those agreements to continue to receive the benefit of the bargains they struck.
- The Commission should not allow purchasers to void their contracts--whether they are for individually negotiated or generally available terms—through a “fresh look.” The Commission has recognized that “fresh look” is an “extraordinary remedy” that is “a very rare occurrence,”¹² and that “restructuring [existing] contracts may be unfair to both incumbent LECs and other competitors, disruptive to the market place, and ultimately inconsistent with the public interest.”¹³ The Commission cannot grant a fresh look without first finding, at a minimum, that it can nullify the agreements at issue without harm to the public interest,¹⁴ and it has found harmful to the public interest to grant those benefits to one set of marketplace participants who “entered long-term arrangements in exchange for lower prices” when others “avoided the risk of early termination fees by electing shorter contract periods at higher prices.”¹⁵ Allowing purchasers to lower their

¹² *Direct Access to the INTELSAT System*, Report and Order, 14 FCC Rcd 15703, ¶ 118 (1999) (“*INTELSAT*”); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 694 (2003) (“*Triennial Review Order*”).

¹³ *Id.*, ¶ 694.

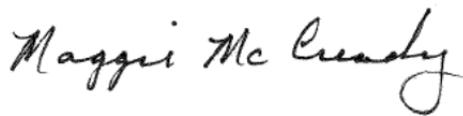
¹⁴ See *INTELSAT*, ¶ 119.

¹⁵ *Connect America Fund*, ¶ 815.

commitment levels at their option during the term of their agreement would have the same effect. In addition, granting a fresh look is unnecessary to accomplish the Commission's goals. In the *Tariff Investigation Order*, the Commission found issues with certain terms of prior tariffs and agreements, and ordered incumbents to remove those terms from their agreements. As the Commission explained, this alternative approach to granting a fresh look "balance[s] the concerns and interests of all parties involved."¹⁶

- The Commission should not extend the changes it ordered in the *Tariff Investigation Order* to individually negotiated contracts. The Commission instead should continue to allow parties to have the flexibility to freely negotiate contracts. Generally available discount plans, now free of the all-or-nothing and other provisions the Commission found unlawful, serve as backstop mechanisms to individually negotiated contracts providers may choose to enter into.
- Nor is there any reason for the Commission arbitrarily to limit the length of terms providers may offer both in generally available discount plans and in individually negotiated contracts. Discount levels generally increase with the length of the term commitment. Providers should be able to design and offer voluntary plans to customers that present increased benefits in exchange for longer terms.

Sincerely,



Copies: Eric Ralph Deena Shetler
 Pamela Arluk David Zesiger
 William Kehoe Justin Faulb
 Christopher Koves William Dever

¹⁶ See *Business Data Services FNPRM* ¶ 96.