

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

In the Matter of)	
)	WC Docket No. 15-247
Investigation of Certain Price Cap Local Exchange)	
Carrier Business Data Services Tariff Pricing Plans)	
)	

COMMENTS OF VERIZON¹

Soon after it adopted the *Tariff Investigation Order*,² the Commission found “intense competition” in the marketplace for business data services.³ That conclusion undermines the *Tariff Investigation Order*, which the Commission based on a presumption of “uneven” competition.⁴ The D.C. Circuit has since remanded the *Tariff Investigation Order* to the Commission for further proceedings.⁵ On remand, the Commission should find the voluntary tariff discount plans that were at issue in the *Tariff Investigation Order* were lawful.

Verizon’s discount plans did not weaken or harm competitive markets, as had been the Commission’s concern.⁶ To the contrary, the Commission now has found—after a comprehensive analysis that was incomplete when the Commission issued the *Tariff*

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² *Business Data Services in an Internet Protocol Environment*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723 (2016) (“*Tariff Investigation Order*”).

³ *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, ¶ 1 (2017) (“*Business Data Services Order*”).

⁴ *Tariff Investigation Order* ¶ 3.

⁵ Order, *AT&T, Inc. v. FCC*, No. 16-1145 (D.C. Cir. Aug. 29, 2017).

⁶ *Tariff Investigation Order* ¶ 93.

Investigation Order—a “dynamic and increasingly competitive marketplace” for business data services.⁷

Recognizing this and noting its interest in reconsidering the *Tariff Investigation Order*’s determinations, the Commission itself asked the D.C. Circuit to remand the case for further proceedings,⁸ and it now asks parties to comment on issues the remand raises.⁹

Because volume and term discounts have procompetitive effects, the Commission has permitted price-cap carriers to offer them in their tariffs.¹⁰ And as we explained in our direct case in the tariff investigation, when standard, undiscounted rates are just and reasonable—which they are here—the terms of a voluntary discount plan cannot have anticompetitive effects.¹¹

The Commission issued the *Tariff Investigation Order* without the benefit of its analysis in the *Business Data Services Order*. In that order, the Commission concluded, “competition is the preferred method of ensuring just and reasonable rates, terms, and conditions and preventing unreasonable discrimination.”¹² It found many markets competitive, and in the relatively few markets where it found competition lacking, it continued to apply price-cap regulation, finding it

⁷ *Business Data Services Order* ¶ 4.

⁸ Mot. for Vol. Remand, *AT&T, Inc. v. FCC*, No. 16-1145, at 3 (D.C. Cir. June 13, 2017).

⁹ *Wireline Competition Bureau Seeks Comment in Connection with Court Remand of Tariff Investigation Order*, Public Notice, WC Docket No. 15-247, DA-17-1078, at 2 (Nov. 3, 2017) (“Public Notice”).

¹⁰ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, ¶ 123 (1999).

¹¹ See Verizon Direct Case, *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, at 4 (Jan. 8, 2016).

¹² *Business Data Services Order* ¶ 124.

“helps ensure just and reasonable prices for customers in non-competitive markets.”¹³ Notably, the Commission did not find a single price-cap ILEC rate for business data services to be unjust or unreasonable.

The Commission’s competitive findings in the *Business Data Services Order* confirm that customers do not have to sign up for voluntary discount plans to secure just and reasonable pricing. Under those circumstances, customers’ decisions to sign up for a discount plan—as the D.C. Circuit concluded in *BellSouth*—should be “most naturally viewed as a bargain containing terms that both benefit and burden its subscribers.”¹⁴ With the benefit of the *Business Data Services Order* and the comprehensive data analysis it performed to reach its conclusions, the Commission should conclude on remand that the voluntary discount plans at issue in the *Tariff Investigation Order* were lawful.

Also, independent of the its competition findings, the Commission’s failure to address *BellSouth* in the *Tariff Investigation Order*—which it acknowledged¹⁵—provides another reason the Commission should reach a different conclusion on remand. For when it does address the D.C Circuit’s decision, the Commission will find it stands for the proposition that price cap ILECs have “no obligation to offer ... discount plan[s] at all.”¹⁶

That said, in 2016 we revised our voluntary tariff discount plans to comply with the *Tariff Investigation Order* so that our customers could continue to enjoy the benefits of those plans. After considering objections, the Commission allowed our tariff revisions to take effect as filed,

¹³ *Id.* ¶ 179.

¹⁴ *BellSouth Telecomms., Inc. v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2006).

¹⁵ *See* Public Notice at 1.

¹⁶ *BellSouth*, 469 F.3d at 1057.

and they are deemed lawful. Our current tariffed discount plans are not at issue in this remand, and the Commission's decision in this remand proceeding should not affect them.

Respectfully submitted,

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