

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

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

REPLY COMMENTS OF VERIZON¹

With no new arguments, Windstream *et al* use their comments to recycle old ones.² For example, despite the Commission’s finding of “intense competition,”³ the Commenters repeat their claim that ILECs “dominate the market for low-bandwidth BDS.”⁴ They repeat their debunked lock-up claims. And they repeat their arguments—which failed last year—against our current, *deemed lawful* tariffed discount plans. In doing so they rely on stale Commission statements⁵ made before the Commission completed its comprehensive data analysis and ignore the Commission’s recent statement that the *Tariff Investigation Order* “may no longer represent the position of the FCC.”⁶ In turn, the Commission should ignore their comments.

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

² See Windstream Services, LLC, INCOMPAS, and Sprint Corp. Comments (filed Dec. 4, 2017) (“Commenters”).

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

⁴ Commenters at 2.

⁵ See, e.g., Commenters at 3 (quoting *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*”).

⁶ Reply to Opposition to the FCC’s Mot. for Vol. Remand, *AT&T, Inc. v. FCC*, No. 16-1166 (D.C. Cir. June 30, 2017).

For many years, these Commenters and others told a tale about rates, terms, and conditions for special access. As the story went, undiscounted tariffed rates were unreasonably high, and there were no competitive alternatives. Because those rates were so high, they told us, customers had no choice except to sign up for tariffed plans that offered discounted rates. But those plans—which they derisively called “lock-up plans”—also were unreasonable, according to the story, because they locked in demand and prevented customers from taking business to other providers.

As it turns out, after years of review culminating with analysis of a comprehensive data request, the Commission found “intense competition” in the marketplace for business data services.⁷ It didn’t find undiscounted rates were too high. In fact, it didn’t find a single tariffed special access rate to be unjust or unreasonable. It didn’t find locked up demand. Instead, it found “substantial and growing competition,”⁸ in a market where “[c]able providers have also emerged as formidable competitors,”⁹ and a “changing industry with increasingly competitive options.”¹⁰

Our customers have choices. They can purchase our legacy services at the undiscounted, just and reasonable prices at which we offer them. They can purchase competing services from other providers, include the “cable business data services ... which directly compete with the products being offered by the incumbent and other competitive LECs.”¹¹ As legacy DSIs are

⁷ *Business Data Services Order* ¶ 1.

⁸ *Id.*

⁹ *Id.* ¶ 2.

¹⁰ *Id.* ¶ 84.

¹¹ *Id.* ¶ 2.

“becoming obsolete,”¹² customers can purchase a more advanced, modern alternative like Ethernet. Or they can opt to purchase DS1 and DS3 service under a tariffed discount plan. As the DC Circuit explained in *BellSouth*, which the Commission is reviewing in this remanded proceeding, customers who exercise their “free choice” and subscribe to a tariffed discount plan enter into a “bargain containing terms that both benefit and burden its subscribers.”¹³

Nevertheless, the Commenters now theorize that reversing the *Tariff Investigation Order* would exacerbate their debunked lock-up concerns. But the lock-up theory held no water in the first place. As AT&T commented, customers rapidly are moving away from legacy special access services, demonstrating that customers are not locked into those services and that they have other options in the marketplace.¹⁴ And while “*under certain market conditions*, discounts accompanied by contractual commitments can lock in so much demand in a given market that they foreclose effective competition within that market,”¹⁵ those market conditions do not exist in the marketplace for business data services. The “ultimate question,” as the Commission explained in the *Designation Order*, is “whether there is harm to competition.”¹⁶ It’s clear from the Commission’s competition findings in the *Business Data Services* that tariffed discount plans caused no competitive harm. The *Tariff Investigation Order* erred by prematurely concluding otherwise.

¹² *Id.* ¶ 3.

¹³ See AT&T Comments at 18-19, quoting *BellSouth Telecomms. Inc. v. FCC*, 469 F.3d 1052 (D.C. Cir. 2006).

¹⁴ AT&T Comments at 12.

¹⁵ *Id.* at 22 (emphasis in original).

¹⁶ *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, Order Initiating Investigation and Designating Issues for Investigation, 30 FCC Rcd 11,417, ¶ 20 (2015) (“*Designation Order*”).

Undaunted, the Commenters double down and claim the tariff revisions Verizon implemented to comply with the *Tariff Investigation Order* are unlawful.¹⁷ But like their other claims, the Commenters have made this one before, and it failed.

To comply with the *Tariff Investigation Order*, we filed tariff amendments that “remov[ed] in each case the relevant language requiring customers to aggregate all their purchases under a single plan.”¹⁸ The Commenters objected, petitioning the Commission to suspend our tariff amendments because customers subscribing to one of the revised plans would have to include in the plan purchases made under one or more of their Access Customer Name Abbreviations (ACNAs).¹⁹ They complained that this frustrated the Commission’s directives in the *Tariff Investigation Order*. But our tariff amendments allowed a single company to “purchas[e] exactly what could be purchased by two independent entities,” which is what the *Tariff Investigation Order* required.²⁰ As we explained in response to the Petition to Reject those tariff revisions, “[V]irtually every (if not every) carrier customer already has multiple ACNAs.... A customer need not include all of its purchases from Verizon in a single discount plan prospectively, and can purchase from multiple discount plans, in the same way that two independent entities could.”²¹

¹⁷ See Commenters at 20.

¹⁸ *Tariff Investigation Order* ¶ 110.

¹⁹ See Petition of Windstream Services, LLC, INCOMPAS, EarthLink, and Sprint Corp. to Reject or Suspend and Investigate Verizon Transmittal No. 1335, at 2 (filed July 8, 2016) (“Petition to Reject”).

²⁰ *Tariff Investigation Order* ¶ 109.

²¹ Reply of Verizon in Opposition to Petition to Reject or Suspend and Investigate Verizon Transmittal No. 1335, at 9 (filed July 14, 2016) (“Response to Petition”).

The Commenters’ arguments here are the same failed arguments the Commission found unavailing in the 2016 Petition to Reject. They allege we have made it difficult to transfer circuits from one ACNA to another, often requiring a disconnection and reconnection.²² As their only support, they cite to the same vague 2016 declaration that they cited to as their only support for the same claim in the Petition to Reject. But as we explained in 2016, the claim is wrong.²³ A customer does not have to physically disconnect and reconnect a circuit to move it from one ACNA to another.

The Commission in 2016 allowed our tariff amendments to take effect on fifteen days’ notice, giving no credence to the Commenters’ arguments. So not only are our current tariffed discount plans pro-competitive, they are deemed lawful. And they are not at issue in this remand. Even if the Commenters’ recycled arguments weren’t meritless, the Commission could not in this proceeding find our deemed lawful tariffs unlawful without violating the Filed Rate Doctrine and our right to due process.

* * * * *

The Commission studied the business data services market and associated issues for more than ten years, reviewing “numerous requests for comment, and a massive data collection.”²⁴ The “technology transition” that has taken off during that review “is moving towards the eventual termination of TDM service offerings altogether.”²⁵ Emblematic of that rapid transition, after the long regulatory fight culminated in the *Business Data Services Order*, the Commission in this

²² Commenters at 20-21.

²³ Response to Petition at 8-9.

²⁴ *Business Data Services Order* ¶ 1.

²⁵ *Id.* ¶ 25.

remanded proceeding received only one set of comments supporting the *Tariff Investigation Order*. The Commenters are litigating yesterday's battles. They, too, should transition.

The Commission should reverse its findings in the *Tariff Investigation Order* and find the plans then under review were lawful.

Respectfully submitted,

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