

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Business Data Services in an)	WC Docket No. 16-143
Internet Protocol Environment)	
)	
Special Access for Price Cap)	WC Docket No. 05-25
Local Exchange Carriers)	
)	

OPPOSITION TO MOTION FOR EXTENSION OF TIME

Sprint Corporation (“Sprint”) hereby submits this Opposition to the Motion for Extension of Time (“Motion”) of the National Cable & Telecommunications Association (“NCTA”), filed in the above referenced proceedings.¹ As discussed below, there is no basis for any further delay in adopting long-overdue Business Data Services (“BDS”), also known as special access, reform. All participants in these proceedings—including NCTA—have had ample opportunity to analyze the BDS data collection, and the Commission has allowed more than enough time for parties to address the issues raised in the Tariff Investigation Order and the Further Notice of Proposed Rulemaking (“*Further Notice*”).

DISCUSSION

The BDS proceeding has already extended far too long. As NCTA recognizes, “[i]t has now been fourteen years since the Commission first started to consider the possibility of modifying the pricing flexibility rules that govern rates charged by price cap incumbent LECs and four years since the Commission suspended its old pricing flexibility rules and started the

¹ Motion for Extension of Time of the National Cable & Telecommunications Association, WC Docket Nos. 16-143 and 05-25 (filed May 13, 2016) (“Motion”).

data collection process that led to creating the largest data set in Commission history.”² That “data set” has been available to the public for more than six months. Moreover, in response to its recent *Further Notice*, the Commission has allowed a generous eight-week comment period, and a further 30-day reply comment period. NCTA now seeks, at minimum, yet another 45-day extension of the comment deadline, and an additional 30-day extension for the reply comment deadline.

NCTA cannot meet the high-bar required for an extension.³ Indeed, NCTA’s request for an extension appears to rest primarily on contentions that (1) cable operators have been blindsided by the Commission’s proposals in the most recent *Further Notice*, and (2) cable operators do not have sufficient time to respond as a result.⁴ Neither claim withstands scrutiny.

The cable industry has been anything but an idle bystander in this proceeding. When the Commission first announced its intent to conduct a comprehensive market analysis in support of BDS reform, it sought and collected data from all BDS providers, including cable operators.⁵ Moreover, the Commission clearly stated that its desire to “determine whether *any* market

² Motion at 2.

³ See 47 C.F.R. § 1.46(a) (“It is the policy of the Commission that extensions of time shall not be routinely granted.”).

⁴ *Business Data Services in an Internet Protocol Environment et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54 (rel. May 2, 2016) (“*Further Notice*”).

⁵ *Special Access for Price Cap Local Exchange Carriers: AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-153, ¶ 21 (rel. Dec. 18, 2012) (“To clarify our terminology, we note that some providers are ‘competitive providers,’ by which we mean competitive local exchange carrier (CLEC), interexchange carrier, *cable operator*, wireless provider or any other provider that is not an incumbent LEC operating within its incumbent service territory.” (emphasis added)).

participants have market power and, if so, where such market power exists.”⁶ In turn, the Commission explained that the data collection would allow the Commission to determine “how to construct (where required) targeted regulatory remedies”⁷ to address BDS market power. Thus, from the outset, the Commission’s BDS inquiry has been broad and has not excluded any providers of BDS from consideration.

Subsequently, cable operators have taken on controversial yet central roles in this proceeding. Incumbent LECs, as they have done for years, have repeatedly attempted to avoid regulation based on the promise that cable operators will soon become formidable competitors.⁸ Cable operators themselves have filed comments, indicating that they were fully aware of both the proceeding itself and the relevant inquiries in relation to cable operators.⁹ For months, commenters have asked the FCC to ensure that any changes to the BDS regulatory regime be applied equally to all BDS providers, including cable operators.¹⁰ Accordingly, the cable industry cannot now claim that it was suddenly blindsided by the proposals contained in the *Further Notice*.

⁶ *Id.* ¶ 67 (emphasis added).

⁷ *Id.*

⁸ *See, e.g.*, Comments of Verizon at 29, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) (“[C]able companies are not only increasingly dominant providers of wireline residential broadband nationwide, but they have also expanded their networks and services to provide dedicated high-capacity services to businesses of all sizes as well as to other providers”); Comments of AT&T Inc. at 3, WC Docket No. 05-25, RM-10593 (filed Jan. 27, 2016) (arguing that the FCC’s special access analysis had failed to take into account the “explosive growth and facilities investment of the cable industry”).

⁹ *See, e.g.*, Reply Comments of the National Cable & Telecommunications Association, WC Docket No. 05-25, RM-10593 (filed Feb. 19, 2016).

¹⁰ *See, e.g.*, Comments of CenturyLink at 33-34, WC Docket No. 05-25, RM-10593 (filed Jan. 28, 2016) (“The goals of regulatory and competitive neutrality between similarly situated competitors cannot be met if ILECs, and ILECs alone, are saddled with wholesale access obligations that their competitors do not bear.”).

NCTA also argues that cable operators do not have sufficient time under the current deadlines to respond to the *Further Notice*, because of the complexity of the proposals and the difficulty in acquiring the necessary data to engage with the proceeding. This claim does not justify NCTA's efforts to delay the imposition of long-awaited BDS reform. NCTA has had access to the BDS data for months¹¹ and has had the same opportunity as all other participants to analyze that data. If NCTA chose not to take advantage of its opportunity to analyze the data, the businesses that depend on access to affordable data services should not suffer from further delay as a result. No other party has expressed concern with the purported "complexity" of the proposals contained in the *Further Notice*, and NCTA does not explain why the cable industry, unique to other participants in the proceeding, needs extra time to address them.

It appears that NCTA's real complaint is not that the cable industry lacks sufficient notice or time to comment on the *Further Notice*, but that the cable industry does not *agree with* the proposals in *Further Notice*. This proceeding has already undergone eight separate extensions of pleading cycles, each one delaying the reform that will repair the marketplace that forms the bedrock of business data services nationwide. Rather than seeking additional delays, NCTA and its members should air their grievances in their comments and do so within the appropriate amount of time that the FCC has allotted for responses.

¹¹ See Letter from Michael H. Pryor, Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC WC Docket No. 05-25, RM-10593 (filed Jan. 20, 2016).

CONCLUSION

For the foregoing reasons, the FCC should dismiss NCTA's request for delay in this proceeding and affirm its commitment to reforming the broken BDS market in an expeditious manner.

Respectfully Submitted,



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May 17, 2016

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