

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Business Data Services in an Internet Protocol Environment	)	WC Docket No. 16-143
	)	
Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans	)	WC Docket No. 15-247
	)	
Special Access Rates for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

**REPLY COMMENTS  
OF NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these Reply Comments in response to the Further Notice of Proposed Rulemaking in the above-referenced proceedings.<sup>2</sup>

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<sup>1</sup> NTCA is an industry association composed of nearly 900 rural local exchange carriers (“RLECs”). While these entities were traditional rate-of-return-regulated telecommunications companies and “rural telephone companies” as defined in the Communications Act of 1934, as amended (the “Act”), all of NTCA’s members today provide a mix of advanced telecommunications and broadband services, and many also provide video or wireless services to the rural communities they serve. Of relevance to this particular proceeding, several hundred NTCA members have affiliates that operate as competitors offering voice, video, and data services in the rural portions of territories of price cap-regulated incumbents.

<sup>2</sup> *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Tariff Investigation Order and Further Notice of Proposed Rulemaking (rel. May 2, 2016) (“FNPRM”).

As an initial matter, NTCA supports the conceptual shift in direction in this proceeding, whereby the Federal Communications Commission (the “Commission”) appears poised to consider a more holistic analysis and application of rules based upon the nature of a service offered, conditions in the marketplace, and significant public policy objectives rather than based upon the mere technology used in the underlying network or even the historical categorization of the provider. Without taking a position on any specific relief to be granted, NTCA concurs for example with the thrust of Verizon and INCOMPAS as captured in a joint letter earlier this spring, wherein they recommended that the Commission “promptly adopt a permanent framework for regulating *all* dedicated services in a technology neutral manner.”<sup>3</sup> Similarly, NTCA welcomes the Commission’s discussion of how to promote a “technology-neutral framework” that turns upon analysis of whether a specific market is “either competitive or non-competitive.”<sup>4</sup>

Indeed, comments to treat “all” transmission the same echo the common-sense regulatory paradigm suggested by NTCA almost four years ago in its Petition for Rulemaking with respect to technology transitions.<sup>5</sup> Specifically, NTCA’s Petition highlighted that the evolution of technology *within* underlying networks should be viewed as independent of the regulation of individual services *atop* those networks, rather than having the level and type of regulation

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<sup>3</sup> *Ex Parte* Letter from Kathleen Grillo, Sr. Vice President – Public Policy & Government Affairs, Verizon, and Chip Pickering, Chief Executive Officer, INCOMPAS, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 05-25 and RM-10593 (filed Apr. 7, 2016) (“*Verizon-INCOMPAS Letter*”), at 2 (emphasis added).

<sup>4</sup> See *FNPRM*, at ¶¶ 256-260.

<sup>5</sup> *Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution*, GN Docket No. 12-353 (filed Nov. 19, 2012).

dependent upon network technology.<sup>6</sup> In particular, NTCA’s Petition called upon the Commission to acknowledge once and for all that “transmission is transmission,” and to adopt a regime in which regulation of the transmission of data from points A to Z does not turn upon whether such transmission has been, for example, magically sprinkled with “IP pixie dust” or happens to be located at one point as compared to another point within the underlying network.<sup>7</sup>

Suggesting the Commission should migrate from “historically or technologically silo-ed” regulation, however, is not to say there is never any need for tailoring of regulations to recognize specific market conditions or to help achieve specific, well-defined public policy purposes. To the contrary, as the vast majority of comments in this proceeding make clear with respect to Business Data Services (even as they may differ on the specific facts and factors that may render given markets competitive or not),<sup>8</sup> a permanent regulatory framework can and should distinguish between levels of competition in markets in right-sizing regulation, and regulatory frameworks should specifically be designed as well of course to achieve other important public policy objectives.<sup>9</sup> Moreover, any regulatory framework adopted in this proceeding should address and

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<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 13-14; *see also Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Dockets No. 13-3 and 13-5, RM-11358 (filed July 5, 2016); Reply Comments of NTCA, *et al.*, GN Docket No. 13-5 (filed Aug. 7, 2013), at 9. Indeed, because the issues raised in this docket translate – or, at least, *should* logically translate – to the Commission’s ongoing consideration more generally of regulation of transmission and “all” dedicated services in the context of technology transitions, NTCA is filing these Reply Comments in those dockets as well.

<sup>8</sup> *See, e.g.*, Verizon at 16-23; Fiber-to-the-Home Council at 3-16; ITTA at 7-20; Competitive Carriers Association at 7-12.

<sup>9</sup> For example, given that the Commission just recently reformed universal service mechanisms that govern distribution of support to RLECs and in light of the still-nascent ongoing effort to implement and integrate those reforms with the regulation and pricing of RLEC special access transmission services, any action the Commission might take here in the context of this

mitigate regulatory burdens on small businesses. Indeed, smaller competing firms should not be burdened with significant new *ex ante* regulations here because, by definition, these smaller firms are competing with the much-larger price cap ILEC where they exist;<sup>10</sup> rather, the proper question here is whether and to what degree the price cap ILEC should be subject to a lighter-touch level of regulation where a competitor exists to establish a “level regulatory playing field.”

NTCA’s general agreement with the conceptual direction of this proceeding should not be construed to speak in favor of any one party’s specific preferred outcome or any given proposed set of rules with respect to Business Data Services. Rather, NTCA merely observes that, from an analytic perspective, the record here reaffirms the broader need to adopt a different way of approaching regulation in a world where networks and services are no longer inextricably intertwined, and to cease in particular in giving “free (or reduced) passes” without careful

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notice focused specifically on dedicated services in price cap-regulated ILEC areas would not and should not affect services provided by RLECs within their incumbent study areas. *See Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016), at ¶¶ 189-198 (discussing pricing and tariffing considerations arising out of recent universal service reforms).

<sup>10</sup> For similar reasons, NTCA strongly supports the Comments of the Rural Independent Competitive Alliance (“RICA”) in arguing for exclusion of smaller competitive carriers from future data collections with respect to Business Data Services. NTCA and RICA have previously provided data showing that the Commission’s burden estimates with respect to prior special access data collection efforts were substantially lower than the actual burden involved in responding to such requests. Moreover, as RICA notes, in a market that was \$45 billion in 2013 and likely larger now – and likely much larger still if one includes Ethernet offered by cable firms in the market analysis – individual firms that have less than \$5,000,000 in gross annual special access/Business Data Service revenues would equate to a “rounding error” in the assessment of the marketplace for these services. If there is a subsequent belief that the lack of data from a smaller competitive provider has led to an inaccurate or incomplete assessment of the state of competition in a given geographic market, *see FNPRM*, at ¶¶ 204-215, the Commission can always identify that market and obtain additional data on a targeted basis in lieu of imposing far-reaching reporting burdens on all smaller carriers.

forethought and disciplined analysis of the public policy consequences to certain types of services solely because the transmission involved may be a “channel termination” or “last mile” or “middle mile” or “backbone,” or the technology involved may be “IP-enabled” or “legacy.”

NTCA therefore encourages the Commission to use this proceeding and related technology transitions efforts as a springboard to harmonize and right-size regulation of “all” transmission and exchange of data between networks in a thoughtful, careful manner and in furtherance of statutory goals of consumer protection, competition, and universal service.

Respectfully submitted,



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