



June 27, 2016

VIA ECFS

EX PARTE

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
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

Dear Ms. Dortch:

INCOMPAS and Verizon agree with the Commission: it is time for a new start and a new framework for Business Data Services.¹

The Commission in the *Business Data Services FNPRM* identified four principles—which INCOMPAS and Verizon support—that should underpin that new framework. First, competition is the best way to ensure customers benefit, but where it is inadequate, price regulation is appropriate to ensure non-competitive market conditions do not disadvantage business customers and their ability to compete and innovate in downstream markets.² Second, the new framework for Business Data Services should be technology neutral.³ Third, the framework should remove barriers that may inhibit the migration to newer, more efficient technologies.⁴ And fourth, the framework should work for not only today’s marketplace but also for the future, and should encourage new facilities-based market entry.⁵

In furtherance of these principles, INCOMPAS and Verizon have jointly developed an outline for a new framework for Business Data Services. Although we have not reached agreement on all elements needed to implement this framework, we both support the following approach.

¹ *Business Data Services in an Internet Protocol Environment, et al*, WC Docket Nos. 16-143, 15-247, 05-25, and RM-10593, FCC 16-54 (rel. May 2, 2016) at ¶4 (“*Business Data Services FNPRM*”).

² *Id.* at ¶5.

³ *Id.* at ¶6.

⁴ *Id.* at ¶7.

⁵ *Id.* at ¶8.

First, we support a competitive market test that balances precision with administrability, and accounts for potential competition, by analyzing competition by capacity-based products and census block geographies.

Second, recognizing economic challenges to new facilities-based entry at lower speeds, and for administrative ease, we agree that all Business Data Services at or below a specified threshold should be deemed non-competitive in all census blocks. We agree that the specified threshold should be no lower than 50 Mbps. Likewise, recognizing the greater economic incentives to build out very high capacity circuits, and for administrative ease, we agree all services above 1 Gbps would be deemed competitive.

Third, we agree that the Commission should determine whether a census block is competitive for Business Data Service between the thresholds specified above, that the Commission initially should use the recent data collection for this purpose, and that the Commission should schedule periodic updates of these data.

Fourth, we agree that a census block should be deemed competitive by measuring the number of facilities-based providers in the census block, although we have not agreed on what constitutes such a provider. For purposes of applying this test, the ILEC, including its affiliates, would be deemed to be a single facilities-based provider in all census blocks within the ILEC's service area, and a provider only utilizing UNEs or offering best-efforts services would not.

Fifth, we agree that the Commission should periodically review the extent to which its framework (including the low-bandwidth threshold, the high-bandwidth threshold, and the census block test) accurately classifies services as non-competitive and competitive. If the Commission determines that its framework does not achieve this objective, it should adjust the framework so that it aligns more closely with market conditions.

Sixth, we support ex ante price regulation for all Business Data Services deemed non-competitive.

Seventh, we agree that price caps should apply to TDM-based Business Data Services in areas served by price cap ILECs. We agree that there should be a one-time adjustment to these rates (implemented over no more than a two-year period) to account for the freeze in rates under the *CALLS Order*, and that going forward there should be an annual adjustment to rates based on an X-factor of 4.4 percent minus inflation.

Eighth, we agree that pursuant to the ex ante price regulation framework, prices for Packet-Based Business Data Services deemed non-competitive should be reduced. We would support accomplishing this through a benchmark price approach for such Business Data Services that satisfies the objectives of Sections 201 and 202 of the Communications Act; is applied in a way that is technology-neutral and that does not discourage new entrants from entering markets and building facilities to compete with existing providers; and which may recognize differences in bandwidth, term, and class of service. Going forward, we agree the

benchmarks should be reduced annually by 4.4 percent minus inflation to reflect increased efficiencies. The Commission should review this periodically to account for market conditions.

INCOMPAS and Verizon have worked hard to develop a proposal that represents a middle ground between many different perspectives and which addresses the core principles set forth in the *Business Data Services FNPRM*, and we will endeavor to resolve additional issues such as the appropriate relationship of wholesale and retail Business Data Services prices.

We hope the approach proposed above, which reflects months of effort, helps the Commission develop an administratively simple and pro-competitive framework for Business Data Services.

Sincerely,



Kathleen Grillo
Senior Vice President
Public Policy and Government Affairs
Verizon
1300 I Street, NW, Suite 400 West
Washington, DC 20005
202-515-2533



Chip Pickering
Chief Executive Officer
INCOMPAS
1200 G Street, NW, Suite 350
Washington, DC 20005
202-296-6650