August 9, 2016

EX PARTE - VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143; Special Access Rates for Incumbent Local Exchange Carriers, WC Docket No. 05-25 and RM 10593

Dear Ms. Dortch:

In our two previous letters, INCOMPAS and Verizon agreed that the Commission should adopt a new framework for Business Data Services, including both traditional TDM and packet-based services, and we outlined a framework for the Commission to consider. After continued efforts to find additional compromises, in this letter we set out further proposals for implementing our suggested framework. We think these proposals continue to reflect a middle ground and would result in an administratively simple framework that can help guide the Commission towards pro-competitive reform.

I. Pricing Reform

In our June 27 Letter, we agreed that price caps should apply to TDM-based Business Data Services in areas served by price-cap LECs. This would include areas currently subject to Phase II pricing flexibility, and prices in Phase II areas would be returned to price cap levels before any further adjustment described in this letter. We also agreed there should be a one-time adjustment to rates for these services (implemented over no more than a two-year period) to account for the freeze in rates under the CALLS Order. After further discussion and review of the record, we propose the Commission apply this one-time rate adjustment in two steps. In the first year, we propose the Commission reduce the Price Cap Index (“PCI”) by 10 percent with an additional rate reduction based on an X-factor of 4.4 percent minus inflation. In the second year, we propose an additional 5 percent reduction in the PCI, plus an additional rate adjustment based on an X-factor of 4.4 percent minus inflation. Going forward, the PCI would continue to be adjusted annually by an X-factor of 4.4 percent minus inflation.

Also in our June 27 Letter, Verizon and INCOMPAS supported a benchmark approach for Packet-Based Business Data Services deemed non-competitive. We have since discussed many options for developing appropriate benchmarks that satisfy the objectives we set forth in that letter. Both of us have made compromises, and we now propose an administratively manageable methodology for establishing these benchmarks for services offered in price-cap carrier served areas:1

1 The parties have not yet agreed as to the appropriate relationship between wholesale and retail pricing.
The benchmark for the switched Ethernet service closest in quality to TDM-based DS1 special access that each price-cap carrier currently offers at its lowest speed above 1.5 Mbps—typically 2 Mbps or 3 Mbps—for a three-year term would equal the carrier’s tariffed, publicly available DS1 special access circuit rate for a three-year term, after applying the full one-time adjustment and annual X-factor minus inflation adjustment. The DS1 circuit rate would include the rates for one channel termination, one fixed mile, five variable miles and 1/20th of a DS3/DS1 multiplexing arrangement. This and all other Ethernet benchmarks cover charges for the carrier handoff point to the end user premises.

Once the lowest-speed benchmarks are established, the benchmarks for higher Ethernet speeds would be derived by applying the price-cap carrier’s respective relationship of rates for higher-speed Ethernet services to the lowest-speed Ethernet services. The Ethernet rate relationship would be developed using the rates in each price-cap carrier’s publicly available product guide. A carrier that does not have a publicly available product guide would file with the Commission rate information necessary to establish the benchmarks. For carriers for which the necessary information is not available, the Commission could develop a benchmark using the average of the available information. Services with a different quality of service should reflect a reasonable relationship to the benchmark.

Price-cap carriers would post on their websites schedules of the benchmarks.

The benchmarks would be reduced annually by 4.4 percent minus inflation.

New entrants would not be subject to the benchmark at least until the FCC reassesses market competition in approximately three years.

We also propose the Commission should adopt a streamlined dispute resolution process that reflects which parties possess necessary information to resolve complaints related to compliance with the benchmarks. We agree that while a complaint is pending, it would be reasonable to permit a complainant to pay the benchmark rate, subject to true-up and interest.

II. Competitive Market Test

In our June 27 Letter, INCOMPAS and Verizon agreed that all Business Data Services at or below a specified threshold should be deemed non-competitive in all census blocks. We agreed 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 agreed all services above 1 Gbps would be deemed competitive. We further agreed 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. We proposed that 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

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2 The parties are working to further define the Ethernet service level closest to TDM-based DS1 special access and related issues, but agree it should be associated with one of the highest levels of Business Data Services quality of service a provider offers.
using UNEs or offering only best-efforts services would not.

For this competitive market test, INCOMPAS and Verizon propose the Commission should define a facilities-based provider as one that has an actual customer or connection in a census block served by facilities owned, not leased, by that provider. In measuring the number of such providers needed to demonstrate that a census block is competitive, we propose the Commission should measure the number of providers in either the census block or any adjacent census block. We are continuing to discuss how many providers we think would be enough to deem a census block competitive, but agree that it should be more than two.

Finally, the parties agree that the above framework should result in actual price reductions from current levels (i.e., not merely "paper gains") for TDM and Ethernet services, including those purchased through discount plans, and that prices for those services should continue to decline over time. The parties propose that the existence of these benchmarks would not justify increased rates. We also agree that these benchmarks should apply in a neutral manner, and we propose that the Commission should make clear that Ethernet services provided to wireless providers are subject to this framework, including the benchmarks.

We have ironed out these additional joint proposals after much effort and many hours of discussion. We hope they supplement the proposals INCOMPAS and Verizon made in our earlier letters and eventually will lead to a framework for Business Data Services that addresses the Commission’s key principles and goals.

Sincerely,

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