

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

In the Matter of)
)
Regulation of Business Data Services for Rate-of- Return) WC Docket No. 17-144
Local Exchange Carriers)

**COMMENTS OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) hereby submits its comments with respect to the *Notice of Proposed Rulemaking*, FCC 18-46, released April 18, 2018, in the captioned proceeding (“*NPRM*”). These comments are timely filed in accordance with the schedule established in 83 FR 22923 (May 17, 2018).

WTA supports the Business Data Service (“BDS”) regulatory proposals advanced by ITTA – The Voice of America’s Broadband Providers (“ITTA”) and USTelecom in their May 25, 2017 “Petition for Rulemaking” that was referenced in paragraph 62 of the *NPRM*.¹ Specifically, WTA urges that Rate-of-Return (“RoR”) carriers receiving model-based support,² including Alternative Connect America Cost Model (“ACAM”) companies and Alaska Plan companies, be permitted to opt voluntarily into rules substantially the same as those governing the provision of BDS by price cap carriers.

WTA-Advocates for Rural Broadband

WTA is a national trade association representing more than 340 rural telecommunications providers that offer voice, broadband and video-related services in rural America. WTA

¹ ITTA-The Voice of America’s Broadband Providers and USTelecom, “Petition for Rulemaking” (May 25, 2018).

² Although the *NPRM* is focused exclusively on the regulation of BDS provided by RoR carriers receiving model-based support, WTA believes that the regulation of BDS provided by RoR carriers receiving cost-based support can also be relaxed in order to free up more resources for broadband deployment and without adverse impact upon BDS customers. WTA asks the Commission to consider in the future rule changes that would reduce the expenses incurred by cost-based RoR carriers to comply with the regulation of their BDS services.

members are predominately rural local exchange carriers (“RLECs”) that serve some of the most rugged, remote and/or sparsely populated areas of the United States. The typical WTA member has 10-to-20 full-time employees and serves fewer than 3,500 access lines in the aggregate and fewer than 500 access lines per exchange. WTA members are providers of last resort to many remote areas and communities that are both very difficult and very expensive to serve.

WTA members are all Rate-of-Return (“RoR”) carriers. Approximately forty-five percent (45%) of WTA’s members are included among the 207 RoR companies that elected Alternative Connect America Cost Model (“ACAM”) support for the 2017-2026 period.³ Eleven (11) WTA members have opted into the Alaska Plan, while the remaining WTA members have remained on cost-based RoR regulation for a variety of circumstances and reasons.

**WTA Supports a Voluntary Option to Allow
RoR Recipients of Model-Based Support to Elect Substantially the
Same Regulation for their BDS Services as Price Cap Carriers**

As WTA understands them, the price cap rules for BDS: (a) subject Time Division Multiplexed (“TDM”) channel termination services below 50 Megabits per second (“Mbps”) capacity (such as TDM-based DS1 and DS3 services) in non-competitive counties to price cap regulation (but afford flexibility to employ volume and term discounts and contract-based services); (b) relieve TDM channel termination services below 50 Mbps capacity in competitive counties from *ex ante* pricing regulation; and (c) substantially deregulate packet-based services, TDM transport and TDM channel termination services above 50 Mbps capacity.

³ See Public Notice (*Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More Than \$51 Million Annually in Alternative Connect America Cost Model Support And Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*), WC Docket No. 10-90, DA 16-1422, released December 20, 2016; and Public Notice (*Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*), WC Docket No. 10-90, DA 17-99, released January 24, 2017.

WTA requests that ACAM and Alaska Plan companies, as well as other RoR carriers that receive model-based support at the present time or in the future, be permitted to opt voluntarily into regulation that is substantially equivalent to price cap regulation for their BDS services.

The *NPRM* recognizes that “[b]ecause ACAM carriers that elect to move away from rate-of-return regulation for their BDS offerings . . . will no longer need to provide cost-based justification for their rates, [the Commission will] relieve them of burdensome cost-based pricing regulation, including the obligation to conduct cost studies for purposes of ratemaking.” *NPRM* at ¶1. WTA wholly agrees that the elimination of the need to prepare and file cost studies is a primary benefit of allowing ACAM, Alaska Plan and other RoR carriers receiving model-based support to elect price cap treatment for their BDS services. *NPRM* at ¶11. Given that cost studies are no longer required to calculate model-based high-cost support or switched access charges, it is becoming increasingly more costly and less beneficial to prepare them for BDS services. For example, cost studies for ACAM companies can cost over \$40,000 per study area and continue to require approximately the same amount of recordkeeping and allocation procedures to assign joint and common costs to BDS alone as to assign them to BDS and switched access services. And, in addition to more of the burdens of cost study expenses needing to be recovered from BDS services, the protections of cost studies against unjust and unreasonable rates are needed less and less by BDS customers. For example, the typical BDS customers of WTA members are cellular carriers and tower sites, Walmarts and other national or regional businesses, and governmental agencies and institutions. Most such BDS customers tend to be larger and economically more powerful than the RLECs that serve them. Few are passive or powerless price takers, and most are readily capable of negotiating the BDS arrangements they want or

finding and making alternative BDS arrangements if they are dissatisfied with the rates, quality, terms or conditions offered to them by RLECs.

WTA supports the *NPRM*'s proposal to allow electing ACAM and Alaska Plan carriers to remain in the National Exchange Carrier Association ("NECA") traffic-sensitive tariff for switched access services, and to continue to be subject to the switched access rate cap provisions of Section 51.909 of the Commission's Rules and the Eligible Recovery provisions and timetables of Section 51.917 of the Rules. *NPRM* at ¶15. In particular, the ability to complete the ongoing Connect America Fund – Intercarrier Compensation ("CAF-ICC") transition eliminates a potentially significant impediment that could discourage some ACAM and Alaska Plan carriers from electing price cap treatment for their BDS services.⁴

WTA also understands that ACAM and Alaska Plan carriers will need to make the proposed voluntary election at the holding company level for study areas in all states where they elected to receive ACAM or Alaska Plan support. *NPRM* at ¶17. WTA notes the obvious fact that holding companies and affiliated companies that elected to receive ACAM support in some states and to remain on cost-based RoR support in other states will only be eligible (or required) to elect the proposed price cap treatment in the states where ACAM was elected.

WTA agrees with ITTA and USTelecom that adoption of their proposal would render unnecessary individual petitions by electing RoR carriers for price cap conversion and/or waivers. ITTA/USTelecom petition, p. 14. In particular, the ITTA/USTelecom proposal requests an exception to the price cap "all-or-nothing" rule (47 C.F.R. §61.41) to allow electing carriers to remain RoR carriers for all purposes other than BDS regulation. *Id.*, p. 16. The ITTA/

⁴ The *NPRM* proposes to require electing carriers to remove their BDS services from the NECA tariff. While the Commission has previously required carriers electing incentive regulation to leave the NECA pools, WTA believes the Commission should also consider in the future ways that incentive-type mechanisms can work within the NECA pool. Doing so may reduce regulatory burdens on these carriers as well, thereby freeing up resources for broadband deployment without adverse impact upon BDS customers.

USTelecom proposal also affords electing carriers a one-time opportunity to unfreeze their separations category relationships when establishing initial price cap BDS rates. *Id.*, pp. 15-16.

WTA would seek one further change in the price cap provisions applicable to the BDS services of electing RoR carriers – namely, elimination of the two percent (2%) productivity factor. Labor costs are a substantial and increasing component of the cost of constructing, maintaining and operating the evolving broadband networks of WTA members. The wages, salaries and benefits necessary to attract and retain the qualified and experienced personnel necessary to run evolving broadband networks have been growing significantly during recent years. One WTA member reports approximately 60 percent increases in its total network engineering salaries and in its total plant engineering salaries from 2011 to 2017, primarily as a result of its transition to high-speed broadband services. Another WTA member reports that average total salaries of its engineering, information technology and network technician staffs have increased by over 39 percent from 2012 to 2017, again due to the higher salaries it has had to pay to obtain qualified broadband service employees. Yet a third WTA member reports that the labor rates for its broadband construction and technical staffs have increased by more than 22 percent since 2011. Given increasing broadband-related labor costs and the fact that the typical WTA member has only 10-to-20 employees, it does not appear possible for many small ACAM and Alaska Plan companies to achieve productivity gains of two percent each year. Whereas the X-factor concept makes sense for AT&T, Verizon and other carriers with thousands of employees, how does a small ACAM or Alaska Plan company reduce its 20-member staff by 0.04 employees per year or staff salaries or other costs by two percent per year during a time when it is being required to upgrade its former copper voice network and staff to the facilities and personnel required to operate a substantially fiber-based high-speed broadband network?

With respect to the competitive market test applicable to TDM channel termination services below 50 Mbps capacity, the Commission could reasonably consider the counties already deemed “competitive” for price cap purposes to be “competitive” also for model-based RoR purposes. However, with respect to WTA members and other RLECs, the critical factor is not the degree to which a market is “competitive,” but rather the relative financial strengths and bargaining powers of the respective carriers and their existing and prospective BDS customers.

ACAM companies do not receive model-based high-cost support in census blocks where there was deemed to be a competitor on the basis of the applicable ACAM challenge process. Hence, it is not clear what type of evidence and results the Commission’s contemplated “competitive market tests” would produce in ACAM company service areas. Moreover, the more significant question is the relative financial strength and bargaining power of the existing and potential BDS customers rather than the presence of competitive BDS providers. For example, if AT&T or Verizon wishes to obtain backhaul for cellular towers, it is perfectly capable of negotiating just and reasonable prices, terms and conditions from the local RLEC, or alternatively constructing, leasing or otherwise obtaining fiber, microwave or satellite connections if it is not satisfied with the RLEC’s service offer or facilities. Likewise, when Walmart locates a store or superstore within an RLEC’s service area, it has the ability to negotiate and obtain exactly the services and prices it wants from the RLEC or to obtain its desired services from its own or other sources. Put simply, RLEC’s generally lack the ability to impose prices and terms upon BDS customers that are usually much larger, and that have the financial resources to obtain what they want without being price takers or otherwise at a bargaining disadvantage to the smaller RLEC. Consequently, whether or not a specific RLEC service area is deemed to be “competitive” as a result of past or future Commission “competitive

market tests,” *ex ante* price regulation of BDS services is unlikely to be needed to protect the large and powerful entities that generally are the purchasers of such services.

Conclusion

WTA supports adoption of the ITTA/USTelecom proposal that ACAM and Alaska Plan companies, as well as any other present or future RoR carriers receiving model-based support, be permitted to opt voluntarily into rules substantially the same as those governing the provision of BDS by price cap carriers. With respect to TDM channel termination services below 50 Mbps in “non-competitive” markets, WTA urges implementation of price cap-like regulation (albeit without a 2 percent productivity factor), so long as the “all or nothing” rule is waived to limit the price cap treatment to BDS and as long as electing RoR companies remain on their existing terminating switch access and CAF-ICC transition path. With respect to TDM channel termination services below 50 Mbps in “competitive” markets, WTA does not object to the use of the existing “competitive market test” results in counties containing price cap and RoR carriers as a basis for eliminating *ex ante* pricing regulation, but notes that a more germane reason is the fact that the much greater relative size and bargaining power of BDS customers vis-à-vis much smaller RoR carriers constitutes a far more effective protection against unjust and unreasonable BDS charges than the actual or potential presence of competitors.

Respectfully submitted,
WTA – Advocates for Rural Broadband

By: /s/ Derrick B. Owens
 Derrick B. Owens
 Senior Vice President of Government
 & Industry Affairs
 400 7th Street NW, Ste. 406
 Washington, DC 20004
 (202) 548-0202

By: /s/ Gerard J. Duffy
 Gerard J. Duffy, Regulatory Counsel
 Blooston, Mordkofsky, Dickens, Duffy &
 Prendergast, LLP
 2120 L Street NW, Suite 300
 Washington, DC 20037
 (202) 659-0830

Dated: June 18, 2018