

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	
	)	
Price Cap Business Data Services	)	WC Docket No. 21-17
	)	
Regulation of Business Data Services for Rate-	)	WC Docket No. 17-144
of-Return Local Exchange Carriers	)	

COMMENTS OF WTA – ADVOCATES FOR RURAL BROADBAND

WTA - Advocates for Rural Broadband (“WTA”) submits these comments on the Commission’s proposal to mandate de-tariffing of legacy business data services (“BDS”) offered by telephone companies.¹ WTA is a national trade association representing approximately 400 small, rural local telecommunications carriers. The typical WTA member company serves fewer than 5,000 customers per service area and has fewer than 50 employees. WTA’s members provide voice, broadband and other communications-related services to some of the most remote, rugged, sparsely populated, and expensive-to-serve areas of the United States, and have been at the forefront of providing advanced services to these very difficult to serve territories. Many of WTA’s members also participate in the National Exchange Carrier Association (“NECA”) tariff pools for BDS services. As explained herein, WTA urges the Commission not to adopt the proposed mandatory legacy BDS detariffing regime, because the

¹ *Price Cap Business Data Services; Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, FCC 25-44, released August 8, 2025, 90 Fed. Reg. 42713 (Sept. 4, 2025)(hereafter cited as “NPRM”). These Comments are timely in light of the government shutdown and the procedures adopted by the Commission as a result. <https://docs.fcc.gov/public/attachments/DA-25-937A1.pdf>

harms from such a policy will outweigh any possible benefits.

The *NPRM* suggests that detariffing will provide the telephone companies with a greater flexibility to respond to competition, as well as reducing those telephone companies' regulatory and compliance costs.² The *NPRM* also contends that the marketplace is much more effective in determining prices than rate of return regulation. And while telephone companies did seek streamlining of the current tariffing processes,³ they were not the ones clamoring for mandatory detariffing.⁴

The situation is not as simplistic as the *NPRM* suggests. Although the *NPRM* recognizes that many of the small telephone companies are part of a tariff pool administered by the National Exchange Carrier Association ("NECA"),⁵ the *NPRM* nowhere discusses the benefits of the NECA tariff pools. Importantly, pooling provides for risk sharing among the small telephone companies that make up the pool, which is a very important consideration to those small companies.⁶ In addition, the pooling provides for much greater efficiency in the telephone companies' setting of rates and prices by providing scale economies for many of the necessary regulatory and business functions. Continuing the current system of permissive, rather than mandatory detariffing, will allow the companies to assess the trade-off of the lower

² See, e.g., *NPRM* at ¶15, citing claims that the current tariff regime "divert[s] investment from new infrastructure towards reams of paperwork."

³ *NPRM* at ¶15.

⁴ The *NPRM* cites the Comments of International Center for Law & Economics and the Comments of the Digital Progress Institute as parties seeking such changes. *NPRM* at notes 46 and 47.

⁵ *NPRM* at ¶40.

⁶ Indeed, such risk sharing provides public benefits and is the basis for the vast insurance industry. <https://www.hioscar.com/blog/how-health-insurance-works-risk-sharing>.

costs and lower risk under the current pooled tariffs versus the possible benefit of greater flexibility to respond to competition with voluntary detariffing.

In contrast, the *NPRM* identifies little in the way of benefits that would result from the proposed mandatory detariffing. The *NPRM* recognizes that there are still areas where there is little in the way of competition for these services. As the *NPRM* observed:

There are 28 total rate-of-return study areas (out of 1,107 study areas) that were deemed competitive under the competitive market test. Is the relatively low number of competitive rate-of-return study areas indicative of a lack of competition in those study areas? Why or why not?⁷

WTA believes that the lack of competitive entry is due to the low population density and difficult conditions that make it costly to deploy terrestrial facilities in these areas. And detariffing of the incumbent telephone companies is unlikely to cause additional competitive entry, because those same low-density, high-cost conditions will continue to exist.

The *NPRM* itself acknowledges that there are unlikely to be benefits to customers in the form of lower prices as a result of the proposed detariffing:

The additional competitive pressure from providers utilizing these technologies suggests that prices would not be impacted significantly by deregulation in a large share of areas currently deemed non-competitive based on the previous iteration of the competitive market test.⁸

The *NPRM* in seeking to force companies to move away from tariffed, rate-of-return regulation also asserts that: “Rate-of-return regulation, by contrast, incentivizes carriers to inflate their costs and rate base and make inefficiently high use of capital inputs, and imposes regulatory burdens on carriers requiring them to prepare cost studies accounting for their costs.”⁹ But

⁷ *NPRM* at ¶ 36 (citation omitted)

⁸ *NPRM* at ¶ 62.

⁹ *NPRM* at ¶ 46, citing the 1962 Averch and Johnson paper.

despite this theoretical concern, in fact the NECA pooled tariffs that represent BDS (*i.e.*, special access), have been decreasing, not increasing, contrary to what Averch and Johnson theorize.¹⁰ This can be attributed to a number of things (*e.g.*, decline in equipment costs; less allocation of costs to special access in parts 36 and 69; migration from more expensive TDM equipment to less costly Ethernet service equipment). But the bottom line is that the proposal for mandatory detariffing would produce little in the way of benefits for customers, but would potentially harm many of the incumbent telephone companies by increasing their risks (by eliminating the pools) and increasing their administrative costs, thus creating pressures to increase prices to consumers.

The *NPRM* also seeks comment on whether the detariffing obligations should be different for end user termination services and transport services.¹¹ WTA does not think there is a reason to apply different treatments to the two categories of service. In the case of transport services, the customers are likely to be communications companies that are larger and likely to have bargaining leverage over the rural telephone companies, so that their negotiating power would result in even higher risk to the incumbent carriers from the loss of risk sharing. Thus, for both end user termination channels and transport services, WTA would urge the Commission to retain permissive detariffing, rather than imposing mandatory detariffing. In sum, WTA urges the Commission to maintain the current option of permissive detariffing

¹⁰ This is reflected in Table 9 of the NECA 2025 Annual Access Tariff filing, filed in June 2025. https://apps.fcc.gov/etfs/public/view_224279_pdf.action?id=224279.

¹¹ *NPRM* at ¶¶ 26-29.

because the “cure” of mandatory detariffing may do grievous harm to the incumbent telephone companies and their customers without much, if any offsetting benefits.

Respectfully submitted,

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