



The voice of mid-size communications companies

November 4, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation: *Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143, 15-247 and 05-25; GN Docket No. 13-5; RM-10593

Dear Ms. Dortch:

ITTA writes to address a fundamental inequity in the current proposal¹ for changes in the regulation of business data services.² To be clear, ITTA and its price cap member companies have challenged the procedural, legal and policy shortcomings of the proposals contained in the *FNPRM* from the outset and continue to do so.³ However, this letter focuses on one element of the current proposal that will particularly have a detrimental effect on ITTA's price cap member companies, and whose rationale does not at all support the proposed action. The actions proposed herein do not mitigate the well-documented concerns of all mid-size incumbent LECs, particularly as several of the midsize incumbent LECs would not receive meaningful relief from the harms of the proposed business data services rate cuts, but this is one of a number of actions that the Commission must take to relieve disproportionate burdens on midsize incumbent LECs.⁴

¹ Fact Sheet: Chairman Wheeler's Proposal to Promote Fairness, Competition, and Investment in the Business Data Services Market (Oct. 7, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1007/DOC-341659A1.pdf (Fact Sheet).

² *Business Data Services in an Internet Protocol Environment et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723 (2016) (*FNPRM*).

³ See, e.g., Comments of ITTA, WC Docket Nos. 16-143 and 05-25, RM-10593 (filed June 28, 2016) (ITTA Comments); Joint Comments of CenturyLink, Inc., Consolidated Communications, FairPoint Communications, Inc., and Frontier Communications Corp., WC Docket Nos. 16-143, 15-247 and 05-25, RM-10593 (filed June 28, 2016) (Joint Comments); Motion to Strike, WC Docket No. 16-143 et al. (filed June 17, 2016).

⁴ Some other proposed actions that would afford relief for midsize incumbent LECs include adopting a transition mechanism that applies business data services rate reductions differently based upon the size of the operations impacted, and ensuring that the Commission fully considers market competition in deciding which services are subject to rate reductions. See Letter from Kathleen Q. Abernathy, Executive Vice President – External Affairs, Frontier Communications, Charles W. McKee, Vice President – Government Affairs, Federal and State Regulatory, Sprint Corporation, and Eric N. Einhorn, Senior Vice President of Government Affairs, Windstream Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, and 05-25 and RM-10593 (filed Oct. 3, 2016); Letter from Jeffrey S. Lanning, Vice President – Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, and 05-25 and RM-10593 (filed Oct. 5, 2016).

The Fact Sheet notes that price caps for business data services have not been adjusted since 2004 and, in order to “restore fairness,” the order would, among other measures, update price caps “to account for over a decade of efficiency gains” through a one-time downward adjustment of 11 percent, phased in over three years, beginning July 2017.⁵ The effective price cap freeze to which the Fact Sheet refers has its roots in implementation of the CALLS plan, adopted by the Commission in 2000 to modify the formula for determining the price cap indices.⁶ As part of the CALLS plan, the Commission separated business data services into their own service basket, and applied a separate rate-adjusting “X-factor” to that basket which, unlike traditional productivity-based X-factors, was designed specifically to “lower rates for a specified time period.”⁷ The CALLS X-factor for business data services was 3.0 percent in 2000, increased to a hefty 6.5 percent for 2001, 2002 and 2003, and was set equal to inflation in 2004, effectively freezing the rates at that time.⁸

ITTA’s incumbent LEC members converted some or all of their service territories to price cap regulation long after business data services rates were effectively frozen in 2004. For example, none of Consolidated Communications’ (Consolidated) operations were subject to price caps in 2004; various of Consolidated’s operations were converted to price cap regulation in 2008, 2012 and 2013.⁹ As noted above, the Fact Sheet claims that the purpose of the one-time downward adjustment is “to account for over a decade of efficiency gains” that have been realized during the effective rate freeze. To the extent, however, that ITTA members have not operated under price cap regulation all of that time, they should not now be treated as if they were subject to price cap regulation, and subject to the effective rate freeze, the entire time.

Importantly, to the extent that ITTA’s price cap member companies were rate-of-return regulated at the time of the *CALLS Order*, when they converted to price cap regulation their business data services rates were far below those price cap rates modified upon adoption of the *CALLS Order* and subject to the effective freeze. This phenomenon was thoroughly demonstrated in the petition for price cap conversion by CenturyLink’s corporate predecessor, CenturyTel, Inc. (CenturyTel), which was granted by the Wireline Competition Bureau in 2009.¹⁰ As CenturyTel asserted:

⁵ Fact Sheet at 1.

⁶ See *Access Charge Reform et al.*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45, 12 FCC Rcd 12962 (2000) (*CALLS Order*).

⁷ *Id.* at 13029, para. 160; see *FNPRM*, 31 FCC Rcd at 4732, para. 19.

⁸ See *FNPRM*, 31 FCC Rcd at 4732-33, para. 19 (citing *CALLS Order*, 12 FCC Rcd at 13025, para. 149).

⁹ See Letter from Michael J. Shultz, Vice President, Regulatory & Public Policy, Consolidated, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247 and 05-25, RM-10593, at 1 (filed Oct. 28, 2016).

¹⁰ See CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 08-191 (filed Sept. 2, 2008), <https://ecfsapi.fcc.gov/file/6520066529.pdf> (CenturyTel Petition); *CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, Order, 24 FCC Rcd 4677 (WCB 2009).

Unlike the price cap carriers that were initially part of CALLS, and that were permitted to freeze their [business data services] rates in 2004, CenturyTel's rate-of-return [business data services] rates have declined steadily over the past few years. As a result, its standard monthly [business data services] rates are now lower than the standard [business data services] rates charged by the typical CALLS company and are significantly lower than the [business data services] rates that CenturyTel would be charging currently had it participated in the CALLS plan from the start.¹¹

CenturyTel reported its rate-of-return DS1 and DS3 weighted average composite rates to be 73 percent and 83 percent lower, respectively, than what they would have been under the CALLS plan.¹² In the face of business data services rates that began substantially lower than CALLS plan rates when ITTA's member companies converted to price cap regulation, requiring the one-time downward adjustment to cover periods when they were subject to rate-of-return regulation simply cannot stand.

Of course, ITTA continues to contend that incumbent LECs have not realized any efficiency gains in their provision of TDM business data services and that costs have not declined at all, such that the Commission should not be making *any* adjustments to current price caps to reflect any purported past productivity gains not taken into account before.¹³

The Fact Sheet maintains that the one-time downward adjustment is largely designed to "restore fairness."¹⁴ As demonstrated above, however, the opposite of fairness will result should the Commission implement the proposed one-time 11 percent downward adjustment for price cap carriers that were subject to rate-of-return regulation at the time the *CALLS Order* was adopted.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs
Vice President, Regulatory Affairs

¹¹ CenturyTel Petition at 6.

¹² *See id.* at 6-7 n.13.

¹³ *See* ITTA Comments at 21-24; *see also, e.g.*, Joint Comments at 70-76; Letter from Melissa E. Newman, Vice President, Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 15-247 and 05-25, RM-10593 (filed Aug. 12, 2016).

¹⁴ Fact Sheet at 1.