



June 6, 2019

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

Re: WC Docket Nos. 17-144, 16-143, 05-25

Dear Ms. Dortch:

ITTA - The Voice Of America's Broadband Providers (ITTA) and USTelecom – the Broadband Association (USTelecom) write to supplement the record in response to the *FNPRM* in the above-captioned proceedings, in support of deregulating transport services provided by rate-of-return carriers that currently receive model-based or other forms of fixed high-cost universal service support and that elect to transition their business data services offerings out of rate-of-return regulation (“electing rate-of-return carriers”).¹

The company-specific information provided below demonstrates that in recent years, rate-of-return carrier TDM transport revenue has declined sharply.² This evidence of competition to rate-of-return carriers' TDM transport offerings is consistent with the Commission's findings of substantial competition to TDM transport in price cap areas, a decision that was warranted in the *Price Cap Business Data Services Order* and remains valid.³ It is also

¹ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers; Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403 (2018) (*Model-Based Rate-of-Return Order and/or FNPRM*).

² The *Model-Based Rate-of-Return Order and FNPRM* defines “TDM transport” to refer to interoffice facilities and channel terminations between an incumbent local exchange carrier (ILEC) wire center and an interexchange carrier, see, e.g., *id.* at 10453, para. 147 n.369. References herein to “TDM transport” refer to *lower capacity* TDM transport, i.e., DS3 or below.

³ See Comments of ITTA and USTelecom, WC Docket Nos. 17-144, 16-143, and 05-25, 2, 4-6 (Feb. 8, 2019) (Joint TDM Transport Comments); Reply Comments of USTelecom and ITTA, WC Docket Nos. 17-144, 16-143, and 05-25, 2, 4-6 (Mar. 11, 2019) (Joint TDM Transport Reply); *Business Data Services in an Internet Protocol Environment et al.*, Report and Order, 32 FCC Rcd 3459, 3496, para. 79 (2017) (*Price Cap Business Data Services Order*), remanded in part *sub. nom. Citizens Telecomms. Co. of Minn. v. FCC*, 901 F.3d 991 (8th Cir. 2018) (*Citizens Telecomms. v. FCC*), stay of partial vacatur granted *Citizens Telecomms. Co. of Minn. v. FCC*, No. 17-2296 (8th Cir. Nov. 9, 2018). Although the Eighth Circuit remanded the regulatory disposition of price cap carrier TDM transport to the Commission for further proceedings, it did so purely on procedural grounds. See *Citizens Telecomms. v. FCC*, 901 F.3d at 1004-06; see also *Model-Based Rate-of-Return FNPRM*, 33 FCC Rcd at 10453, para. 147. As discussed in the Joint TDM Transport Comments and Joint TDM Transport Reply, re-adoption by the Commission of nationwide relief from ex ante pricing regulation of price cap carriers' TDM transport services is eminently justified.

consistent with a recent industry report issued by Atlantic-ACM containing market intelligence confirming that demand for price cap and rate-of-return ILECs' TDM-based business data services, including TDM transport, continues to fall as wholesale purchasers shift toward higher capacity Ethernet, Wavelength, and other IP-based services available from a variety of suppliers.⁴ This information buttresses ITTA and USTelecom's assertions that the same policy considerations that undergirded the Commission's previous grant of nationwide relief from ex ante pricing regulation of TDM transport to price cap carriers likewise support a grant of such relief to electing rate-of-return carriers.

Recent Steep Declines in Rate-of-Return Carriers' TDM Transport Revenues Demonstrate the Presence of Substantial Competition

The *Model-Based Rate-of-Return FNPRM* seeks comment on whether there are proxies that "could provide a reasonable basis for Commission action," and requests that commenters provide or identify additional data "or other information relevant to the status of competition for lower capacity TDM transport" in the study areas served by potential electing rate-of-return carriers.⁵ Below we provide recent-year TDM transport revenue data for four potential electing or electing rate-of-return carriers.⁶

The precipitous declines in the sample carriers' TDM transport revenues over a brief time span speak volumes as to the presence of competition in the transport product market:

TABLE 1

	Annual TDM Transport Revenues CY 2019 (est.) Compared to CY 2016
Carrier A	-29.7%
Carrier B	-54.1%
Carrier C	-36.9%
Carrier D	-35.7%

⁴ See Letter from Craig J. Brown, Assistant General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 17-144, 16-143, and 05-25, at 1-2 (filed Mar. 1, 2019), Attach., Atlantic-ACM, *U.S. Telecom Wireline and Wireless Sizing and Share Forecast: 2018-2023* (Oct. 2018) (*Atlantic-ACM 2018-2023 Forecast*) (redacted in its entirety); see also, e.g., Comments of CenturyLink, WC Docket Nos. 17-144, 16-143, and 05-25, 10 (Feb. 8, 2019) (CenturyLink February Comments). Although the undersigned officers of ITTA have reviewed the *Atlantic-ACM 2018-2023 Forecast* subject to the various protective orders in these proceedings, here ITTA and USTelecom rely upon data from and assertions based upon the *Atlantic-ACM 2018-2023 Forecast* that are in the public record of these proceedings.

⁵ *Model-Based Rate-of-Return FNPRM*, 33 FCC Rcd at 10458, para. 162.

⁶ We have anonymized the reporting carriers so as to maximize public visibility of the data by avoiding having to file the data under confidentiality protections. The four companies are of varying size and geographic distribution and are representative of electing rate-of-return companies.

TABLE 2

	Annual TDM Transport Revenues CY 2018 Compared to CY 2016
Carrier A	-17.2%
Carrier B	-50.6%
Carrier C	-22.1%
Carrier D	-34.4%

The Commission has found revenue trend data probative in determining the state of competition in the business data services market. For example, in the *Price Cap Business Data Services Order*, the Commission found increasing Ethernet revenues, coinciding with ILEC revenue declines associated with more substitutes in the market, to be effects of competition in the business data services market.⁷

Recognizing that there are hundreds of electing or potentially electing rate-of-return carriers, ITTA and USTelecom compare TDM transport demand trends between Carrier A and those reported by NECA from 2014-2018 to demonstrate that the sample carriers are similarly situated to other rate-of-return carriers:⁸

TABLE 3

	NECA Samples	Carrier A
2014-2018 TDM Transport Demand Changes (% of Circuits)	-58.5%	-62.8%⁹

The figures in Table 3 are intended to demonstrate the symmetry of the decline in TDM transport demand between Carrier A and the NECA sample companies. Thus, the Commission can view the sample TDM transport revenue decline data presented in Tables 1 and 2 as reasonable proxies for TDM transport revenue declines experienced by rate-of-return carriers as a whole. Such declines, as discussed above, are indicia of the presence of competition in the transport product market.

⁷ *Price Cap Business Data Services Order*, 32 FCC Rcd at 3490-91, paras. 68-69; see also, e.g., *id.* at 3485-90, Sec. III.D.2. (extensive discussion of revenue as part of evidence of competitive entry into business data services provisioning in price cap areas); 3461, para. 2 n.4 (revenue shares as indicia of competitive presence of competitive providers).

⁸ The methodology underlying Table 3 is detailed in the Appendix.

⁹ The four-year change in demand portrayed by the methodology is designed to produce an apple-to-apples comparison between two different data sets. Carrier A's actual decline in TDM transport circuit demand over that period was **-49.6%**.

New Industry Data Further Demonstrates that Competitive Forces are Causing Demand for Rate-of-Return ILECs' TDM Transport to Continue Falling

CenturyLink filed in the record of this proceeding the *Atlantic-ACM 2018-2023 Forecast*, a recent report containing market intelligence confirming that demand for price cap and rate-of-return ILECs' TDM-based business data services, including TDM transport, continues to fall as wholesale purchasers shift toward higher capacity Ethernet, Wavelength, and other IP-based services available from a variety of suppliers. The evidence presented above of substantial declines in rate-of-return carriers' TDM transport revenues and demand is consistent with data from that report which has been made publicly available.

For example, consistent with the trending declines in rate-of-return carriers' TDM transport revenues presented above, CenturyLink recounts that, “[a]ccording to Atlantic-ACM, while legacy transport services accounted for 34.8% of business data transport revenues in 2017 (with Ethernet services accounting for the remaining 65.2%), legacy transport is expected to account for only 13.9% of those revenues by 2023.”¹⁰ Similarly, the particular effects of competition to ILECs' legacy transport—where revenues are forecast to drop by 62.5 percent during this time period—are underscored by way of contrast to Atlantic-ACM's projections that overall revenues for business Internet access will grow at compound annual growth rates of 3.5 percent during the same period, driven by “a seemingly insatiable demand” for bandwidth by business end users.”¹¹ At the same time as ILEC legacy transport revenues are projected to decline dramatically, “[f]or business data transport services, cable companies ‘are forecast, collectively, to pick up 6.3% additional market share from 2017-2023, driven by competitive pricing and a growing ability to meet the needs of larger organizations,’” while fiber-based competitive LECs also continue to increase their share of business data services revenues.¹² Moreover, “[c]able's expected market share gain of business wireline revenues will be ‘driven by less *downside exposure to legacy products* and their continued move up-market to [the] largest business customers[.]’”¹³

In sum, the *Atlantic-ACM 2018-2023 Forecast* paints a portrait of a legacy transport services market in steep decline at the same time as the overall business data services market is thriving, and fiber-based competitive LECs and cable providers are garnering increased market share via higher bandwidth offerings. As illustrated above, electing and potential electing rate-of-return carriers are experiencing the same (if not more pronounced) competitive effects on their TDM transport offerings as price cap carriers.

¹⁰ CenturyLink February Comments at 10 (citing *Atlantic-ACM 2018-2023 Forecast* at 57).

¹¹ Comments of CenturyLink, WC Docket Nos. 18-141, 17-144, 16-143, and 05-25, 8 (May 9, 2019) (citing *Atlantic-ACM 2018-2023 Forecast* at 15-16, 46).

¹² *Id.* at 7 (quoting *Atlantic-ACM 2018-2023 Forecast* at 60 and citing *Atlantic-ACM 2018-2023 Forecast* at 148).

¹³ *Id.* at n.23 (quoting *Atlantic-ACM 2018-2023 Forecast* at 48) (emphasis added).

The Substantial Decline in Rate-of-Return Carriers' TDM Transport Revenues are Evidence of Competition that Merit the Same Relief from Ex Ante TDM Transport Pricing Regulation as That Received by Price Cap Carriers

The substantial declines in rate-of-return carriers' TDM transport revenues comport with Commission precedent recognizing revenue trends as indicia of the presence of competitive providers. The revenue declines are also consistent with the revenue trends of price cap carriers that have received relief from ex ante TDM transport pricing regulation. For instance, CenturyLink relays that between 2015 and 2018, its revenues for lower capacity TDM transport dropped nine percent annually.¹⁴ These declines, while considerable, are even less than the three-year rate-of-return carrier TDM transport declines depicted in Table 1.¹⁵ As ITTA and USTelecom have maintained, both judicial and Commission precedent dictate that the Commission apply reasonable inferences in finding that the competitive characteristics of electing rate-of-return carriers' service areas merit the same relief as that received by price cap carriers for their TDM transport.¹⁶

In the *Model-Based Rate-of-Return Order*, the Commission applied reasonable inferences in determining that electing carriers' packet-based and higher capacity TDM-based business data services offerings should not be subject to ex ante pricing regulation. Recognizing that re-creating a data collection akin to the one that informed the *Price Cap Business Data Services Order* would be more difficult for rate-of-return carriers that receive fixed support and that the benefits of such a data collection would likely be far outweighed by its costs, the Commission "dr[e]w parallels where [it] can" from its conclusions in the *Price Cap Business Data Services Order* "to inform [its] analysis of the record in this proceeding."¹⁷ The Commission found persuasive the record's showings of growing demand for packet-based and higher capacity TDM business data services consistent with the Commission's findings in the *Price Cap Business Data Services Order*.¹⁸

Combined with the rate-of-return carrier lower capacity TDM transport revenue and demand trend figures presented above, the same approach the Commission employed in removing ex ante pricing regulation of electing carriers' packet-based and higher capacity TDM-based business data services offerings provides support for relieving electing carriers of ex ante pricing regulation of their lower capacity TDM transport. In the *Price Cap Business Data*

¹⁴ See *id.* at 8.

¹⁵ Similarly, CenturyLink reports that during this same period, its procurement of lower capacity TDM transport from unaffiliated providers fell an average of 10% annually. See *id.* at 8-9. Over that same period, the demand for Carrier A's TDM transport declined by 38.3%.

¹⁶ See Joint TDM Transport Comments at 3, 9-11, 13.

¹⁷ *Model-Based Rate-of-Return Order*, 33 FCC Rcd at 10441, para. 108.

¹⁸ See *id.* at 10443, para. 112.

Services Order, the Commission declared that higher-bandwidth, packet-based services, including transport, “represent the future of business data services,” “will lead to greater returns on investment and in turn, greater incentives for facilities-based entry into the business data services market,” and stand in contrast to legacy, lower capacity TDM transport services that now compete against packet-based broadband services in the same geographic markets and are experiencing decreasing demand.¹⁹ The Commission concluded “this competition, or potential competition between legacy and packet-based services, [is] sufficient to discipline pricing.”²⁰ Having properly applied reasonable inferences in removing ex ante pricing regulation of electing carriers’ packet-based and higher capacity TDM-based business data services offerings, the Commission should do the same for electing carriers of ex ante pricing regulation for their lower capacity TDM transport.

Conclusion

The sample data provided above portray a precipitous decline in recent years of electing or potential electing rate-of-return carriers’ TDM transport revenues. The data can be extrapolated beyond the sample carriers by virtue of a comparative diminution in TDM transport demand between one of the sample carriers and a much larger pool of rate-of-return carriers as captured by data reported annually by NECA. In fact, the sample rate-of-return carriers’ TDM transport revenue and demand declines at least track—if not exceed—those experienced by price cap carriers. The *Atlantic-ACM 2018-2023 Forecast* confirms that the consistently diminishing competitive posture of ILECs’ TDM transport offerings is likely to continue over the course of the next several years.

The formidable drop in rate-of-return carriers’ TDM transport revenues leads to the inextricable conclusion that transport competition widely exists in electing and potential electing rate-of-return carrier service areas, as demonstrated above through the loss of TDM transport demand at a time when general business data services demand is increasing and/or through downward pressure on TDM transport circuit sale prices.²¹ In the absence of the trove of data that properly supports elimination of ex ante pricing regulation of price cap carriers’ TDM transport offerings—and which the Commission agrees would be unduly burdensome and therefore unwarranted to amass in order to evaluate potential regulatory relief for rate-of-return carriers’ TDM transport services—²²the Commission should apply reasonable inferences to

¹⁹ *Price Cap Business Data Services Order*, 32 FCC Rcd at 3498, paras. 83-84.

²⁰ *Id.* at para. 83.

²¹ *But cf. Price Cap Business Data Services Order*, 32 FCC Rcd at 3491, para. 68 (cable business data services revenues recently have grown rapidly “in spite of falling prices, which likely indicates expansion of market output and/or demand shifts to higher bandwidth and thus more competitive services”); *see also, e.g., id.* at 3498, para. 82 (“in the face of increased demand for transport services, we observe responsive market conditions that support the deployment of competitive facilities, through either new entry or conversion”).

²² *See, e.g., Model-Based Rate-of-Return FNPRM*, 33 FCC Rcd at 10458, para. 162 (“We recognize that a large data collection would be a burden on rate-of-return carriers’ limited resources, and we want to avoid imposing unnecessary regulatory burdens on them.”).

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ascertain the sufficient presence of transport competition in electing or potential electing rate-of-return carriers' service areas.

For all of the foregoing reasons, ITTA and USTelecom urge the Commission to grant electing rate-of-return carriers nationwide relief from ex ante pricing regulation of their TDM transport services. Please do not hesitate to contact any of the undersigned with any questions regarding this submission.

Respectfully submitted,

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APPENDIX

Methodology Underlying Table 3

The methodology for an apples-to-apples comparison of NECA data and Carrier A data is complicated for several reasons. For one, Carrier A measures demand on a calendar year basis, while the measurement span of NECA data is 18 months, from the middle of a calendar year to the end of the following calendar year (and is based on demand projections). In order to render an apples-to-apples comparison with annual Carrier A demand data, for each NECA filing during the comparison period the methodology measures the 18-month change in demand, derives a monthly change amount, and then multiplies by 12 to annualize it. The time period of 2014-2018 is employed because end-of-year 2018 is the midpoint of the most recent NECA data that is publicly available. Another complicating factor is that there is no way to longitudinally harmonize the NECA data. In other words, each annual NECA filing evaluates the demand changes for different samples of companies, so one cannot take the demand data from a prior year's filing as a point of comparison. Third, in order to get a representative demand change figure from the NECA data, the methodology averages annualized changes in Channel Mileage Term (CMT) and Channel Mileage Facility (CMF) demand, without regard to the much greater proportion of CMF circuits relative to CMT, although this is relatively insignificant insofar as there was only one year where the demand change variance between CMF and CMT exceeded .1%.

In order to derive the change in demand from 2014-2018, the methodology takes the change in demand from each NECA filing, and simply adds the percentage changes from each year. This results in a figure that is likely significantly higher than the real change in demand because, as is the case here with consistent annual demand declines, the change in a subsequent year is only relative to the previous year, and does not account for the fact that the previous year itself was a decrease from the year prior to that. Nevertheless, in furtherance of the apples-to-apples comparison, the methodology adds four years of NECA data in this manner, as well as four years of Company A's data. Rendering comparisons in total NECA pool demand year-over-year is ineffective because those are prone to be skewed by companies departing from (or entering into) the NECA pool.

To illustrate, from the July 1, 2015 NECA tariff filing, the methodology evaluates the change in demand from actual circuits as of June 30, 2014, and compares them to the projected number of circuits on December 31, 2015, the midpoint of the 2015-2016 test period evaluated in the 2015 tariff filing. The annualized decline in CMF during that period was -21.2%, while the decline in CMT was -21.1%. The methodology therefore averaged them as -21.2% as the first of the 4 figures that were summed to derive the change in demand from 2014-2018. For Carrier A, the decline in demand from 2014-2015 was -18.2%.

The 2015 NECA data are derived from Tariff Transmittal 1455, Vol. 3 Exh. 3; the 2016 data from Tariff Transmittal 1489, Vol. 3 Exh. 3; the 2017 data from Tariff Transmittal 1519, Vol. 3 Exh. 3; and the 2018 data from Tariff Transmittal 1549, Vol. 3 Exh. 3.