

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

**COMMENTS OF ITTA AND USTELECOM**

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## SUMMARY

The Notice of Proposed Rulemaking (“*NPRM*”) in this proceeding recognizes that further streamlining rate regulation of business data services (“*BDS*”) would benefit carriers, competition, and customers alike. Currently, rate-of-return carriers that receive universal service fund (“*USF*”) support based on cost models or on a fixed *USF* receipts basis must comply with burdensome legacy regulations only for their *BDS* offerings (“*model-based carriers*”). These regulations preclude these carriers from offering improved rates, terms, and conditions for *BDS* to their customers, including institutional customers like schools, universities, and hospitals, and impose unnecessary cost burdens. These outdated regulations harm customers and deter rate-of-return carriers from making the investment necessary to meet the modern communications needs of American businesses and other enterprises operating in rural America. The costs of such legacy regulations for these rate-of-return carriers now far outweigh the benefits achievable by the regulation.

ITTA and USTelecom urge the Commission to provide model-based rate-of-return carriers the option to have their *BDS* product offerings regulated in the same manner as those services are regulated for price cap carriers, with the exceptions noted in these comments. We submit that the rules as proposed in our Petition for Rulemaking, which the *NPRM* proposes to grant in large part, would be a more straightforward application of the regulatory decisions contained herein and would more clearly apply the same price cap and detariffing rules on both price cap and electing model-based rate-of-return carriers. Thus, the Commission should simply make the price cap carrier *BDS* rules applicable to electing model-based carriers.

Streamlining *BDS* regulation, either with incentive ex ante pricing regulation or without if sufficient competition exists in a market, is in the public interest. Efficient pricing better

protects competition. Without such streamlining, the incentive of a model-based rate-of-return carrier to invest in facilities capable of both providing robust, modern BDS and effecting the transition to an Internet Protocol-based network is undermined because of the inability to flexibly meet customer needs. Regulatory rigidity harms competition because carriers are unable to offer customers flexible service rates, terms, and conditions. Continued compliance with historical cost-based rate-of-return-based rate regulation, including tariffing, tariff review plans, cost studies, and associated requirements, entails significant costs for carriers receiving model-based support for universal service, and these costs now are incurred only for BDS. Thus, for electing model-based rate-of-return carriers, these costs now far exceed the benefits of rate-of-return regulation.

Where the Commission finds that insufficient competition exists, the Commission should adopt the same modified price cap regulations that are in effect for price cap carrier BDS. Applying the same BDS rules to both price cap and electing model-based rate-of-return carriers would maximize efficiency for the carriers and the Commission alike. As proposed in the *NPRM*, the going-in rates for price cap regulation purposes should be then-existing tariffed rates. For NECA pool members, going-in rates should be based on the pool rate times a net contribution/recipient factor. Also, as proposed in the *NPRM*, the Commission should apply Phase I price flexibility rules to areas deemed non-competitive, which are applicable to areas deemed non-competitive for price cap carriers. The ability to offer contract-based tariffs and volume and term discounts is essential in today's BDS marketplace to meet customer needs and respond to competition. The Commission should forbear from application of its cost assignment rules, including its separation rules, consistent with the forbearance it granted to price cap carriers. As the Commission did for price cap carriers, the Commission should allow an electing

model-based rate-of-return carrier to eliminate Part 32 accounting in favor of GAAP accounting, subject to the conditions the Commission imposed on price cap carriers.

The Commission should eliminate ex ante pricing regulation for packet-based BDS, TDM BDS in excess of a DS3 and transport services. Packet-based BDS and TDM BDS in excess of a DS3 are subject to effective competition throughout the nation, including in model-based rate-of-return carrier territories. The Commission in last year's *BDS R&O* found no "compelling evidence of market power" in price cap carrier provision of such services. For higher bandwidth TDM services, the Commission made a similar conclusion based on nationwide data, rather than a market-by-market analysis. In the end, the Commission recognized that tariffing and ex ante price cap regulation should not be adopted even in the absence of a nearby competitor to accelerate the growth of packet-based and higher capacity TDM BDS, promoting competition and improving consumer choice. The same finding applies to model-based carriers. The *NPRM* proposes different rules for transport services of model-based carriers than those adopted for price cap carriers. That different treatment is not justified. The Commission should rely on last year's *BDS R&O*, which that "widespread competition" for such services justifies a deregulatory approach.

For lower bandwidth TDM BDS, the same marketplace analyses the Commission undertook for price cap carriers apply equally to BDS provided by model-based rate-of-return carriers in their service territories. Customers in areas served by rate-of-return carriers demand modern technological capabilities that only IP-based networks can provide, and model-based carriers have experienced the same rapid decline in DS1 and DS3 service, with a significant increase of Ethernet services during the same time period, an experience that mirrors that of price cap carriers.

Rate-of-return carriers have been experiencing growing competition for BDS from facilities-based carriers, particularly cable companies. Most importantly, rural America has a need for investment in broadband infrastructure so that rural areas can enjoy what is available in urban environments. Typically price cap carriers' service territories include significant swaths of rural America, a fact already recognized by the Commission. The rural areas served by price cap carriers are similar in all relevant ways to the rural areas served by model-based rate-of-return carriers. That conclusion is confirmed by a study conducted by Inteserra Consulting Group, Inc., commissioned by Consolidated Communications and attached to these comments. The Commission, in accordance with past precedent, should use its predictive judgment to infer from the competition that exists in price cap carrier markets that effective competition also exists in electing model-based carrier territories where the same market conditions exist, as represented in the price cap carrier competitive market analysis.

The Commission should also adopt the transition rules proposed in the *NPRM*. The election to treat all BDS under the proposed streamlined rules should not affect the rules in place for switched access services. The *NPRM* proposes that the revised rules be made optional. Providing an option for model-based rate-of-return carriers between two regulatory paradigms is consistent with precedent and therefore should be adopted. The Commission should permit model-based carriers to first elect the new BDS regulatory paradigm as of January 1, 2019, or any July 1 thereafter, on 60 days' notice to the Commission.

ITTA and USTelecom strongly urge the Commission to promptly adopt streamlined BDS rules that would permit model-based rate-of-return carriers to elect new incentive and/or competitive pricing rules for BDS services in a similar manner to those of price cap carriers.

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In line with Administration policies, the Commission has redoubled its efforts to reduce regulatory burdens whenever appropriate. Further streamlining rate regulation of business data services (“BDS”), in particular to either impose incentive regulation or no regulation where a market is competitive, would benefit carriers, competition, and customers alike. Currently, rate-of-return carriers that receive universal service fund (“USF”) support based on cost models must comply with burdensome legacy regulations only for their BDS offerings. These regulations preclude these carriers from offering improved rates, terms, and conditions for BDS to their customers, including institutional customers like schools, universities, and hospitals and impose unnecessary cost burdens. These outdated regulations harm customers and deter rate-of-return carriers from making the investment necessary to meet the modern communications needs of American businesses and other enterprises operating in rural America. The costs of such legacy regulations for these rate-of-return carriers now outweigh the benefits achievable by the regulation.

For these reasons, in response to a Petition for Rulemaking filed by ITTA and USTelecom<sup>1</sup> the Commission adopted the above-referenced Notice of Proposed Rulemaking (“*NPRM*”) proposing to substantially modernize regulation of BDS services offered by Alternative Connect America Cost Model (“A-CAM”) electing rate-of-return carriers and others.<sup>2</sup> ITTA and USTelecom urge the Commission to regulate various BDS product offerings by model-based rate-of-return carriers in the same manner as those services are regulated for price cap carriers, with the exceptions noted in these comments. In particular, we urge the Commission to find that no *ex ante* regulation is necessary of packet-based services, TDM BDS greater than 50 Mbps, and transport services. In addition, the same competitive market test should be adopted for model-based carriers. We submit that the rules as proposed in the Petition would be a more straightforward application of the regulatory decisions contained herein and would more clearly apply the same price cap and detariffing rules on both price cap and electing model-based rate-of-return carriers.<sup>3</sup> Such regulatory parity would promote competition and make the rules less complex.

Many of the proposed remedies in the *NPRM* resemble to a large extent the current BDS price cap regulatory paradigm. The Commission last year concluded that the marketplace for BDS is robustly competitive.<sup>4</sup> As a consequence, the Commission overhauled the regulatory paradigm applicable to price cap carrier provision of BDS in a large number of the nation’s

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<sup>1</sup> ITTA-The Voice of America’s Broadband Providers and USTelecom-the Broadband Association, Petition for Rulemaking, WC Docket No. 17-144 (filed May 25, 2017) (“Petition”)

<sup>2</sup> *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers, Notice of Proposed Rulemaking*, WC Docket No. 17-144, FCC 18-46 (rel. Apr. 18, 2018) (“*NPRM*”).

<sup>3</sup> Petition, Appendix A.

<sup>4</sup> *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, *et al.*, Report & Order, 32 FCC Rcd 3459 (2017) (“*BDS R&O*”), *pet. for rev.*, *Citizens Telecommunications Co. v. FCC*, No. 17-2296 (8th Cir., filed Jun. 12, 2017).



counties, including counties that have traditionally been classified as rural. The same competitive market characteristics exist for rate-of-return carriers providing BDS. The *NPRM* requests that model-based rate-of-return carriers be permitted to opt into existing price cap regulation for their provision of BDS, subject to certain conditions specified below. We support the *NPRM* and propose changes that would improve its proposals in line with Commission goals.

**I. A SUBSTANTIALLY MODIFIED REGULATORY PARADIGM FOR ELIGIBLE RATE-OF-RETURN CARRIERS IS NECESSARY TO PROMOTE INVESTMENT AND COMPETITION**

As with all government regulation, there are costs and benefits associated with rate-of-return regulation of BDS for carriers that receive universal service support based on a cost model. These rate-of-return carriers either (1) have elected to receive universal service support pursuant to the amounts specified in the A-CAM to support broadband and voice services,<sup>5</sup> (2) are otherwise affiliated with price cap carriers and receive support based on the Connect America Cost Model (“CAM”) or reverse auctions,<sup>6</sup> or (3) otherwise receive fixed support, such as carriers subject to the Alaska Plan.<sup>7</sup> These Comments refer to such carriers as “model-based”

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<sup>5</sup> *Connect America Fund*, WC Docket No. 10-90, *et al.*, Report & Order, Order & Order on Reconsideration, & Further Notice of Proposed Rulemaking, 31 FCC Rcd. 3087, ¶ 20 (2016) (“*ROR CAF II R&O*”).

<sup>6</sup> *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 156 (2011) (“*USF-ICC Transformation Order*”), *pet. for rev. denied*, *In re FCC 11-161*, 753 F.3d 1015, 1060 (10th Cir. 2014), *cert. denied*, *United States Cellular Corp. v. FCC*, 135 S. Ct. 2072 (2015).

<sup>7</sup> *Connect America Fund; Universal Service Reform – Mobility Fund; Connect America Fund – Alaska Plan*, WC Docket Nos. 10-90, *et al.*, Report & Order & Further Notice of Proposed Rulemaking, 32 FCC Rcd 10139, ¶ 6 (2016) (“*Alaska Plan Order*”).

rate-of-return carriers.<sup>8</sup> For model-based carriers, the costs of legacy rate-of-return regulation of BDS now far outweigh the benefits from such regulation.

First, as the Commission indicated in the *NPRM*, “incentive regulation encourages carriers to be efficient by granting them at least a share of profits obtained from cost reductions and allowing them to more aggressively serve consumers (including by reducing prices) in the face of competitive pressures.”<sup>9</sup> Efficient pricing through incentive regulation of BD can be beneficial for many model-based carriers. No ex ante regulation, where market conditions justify such treatment, is ever better at promoting efficient pricing, and can eliminate the harms that can attend ex ante pricing regulation.<sup>10</sup>

Second, the incentive of a model-based rate-of-return carrier to invest in facilities capable of providing robust modern BDS is undermined by the current regulatory regime. It is difficult for model-based carriers to justify and fund expensive upgrades to rural networks, which makes it difficult to attract and retain customers seeking modern communications capabilities. The Commission recognized that deterring investment in networks is one of the more serious costs of over-regulation in the BDS marketplace.<sup>11</sup> The need to invest heavily in the transition to Internet Protocol-based (“IP-based”) network services is also undermined with improper pricing

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<sup>8</sup> Although the *NPRM* focuses on applying modified regulations to electing rate-of-return carriers who are receiving A-CAM-based support, it makes clear that other carriers that receive model-based support are included in its proposals. *NPRM*, ¶ 8. The new regulations, if adopted, would also apply to any carrier that opted into a possible second A-CAM offer of support. *NPRM*, ¶ 60 (citing *Connect America Fund*, WC Docket Nos. 10-90, et al., Report & Order, Third Order on Recon. & *NPRM*, FCC 18-29, ¶ 117 (rel. Mar. 23, 2018) (“*2018 Rate-of-Return Order*”).

<sup>9</sup> *NPRM*, ¶ 2.

<sup>10</sup> *BDS R&O*, ¶ 4.

<sup>11</sup> *Id.*, ¶ 93.

regulations, which disserves customers seeking the advanced capabilities and features afforded by IP-based services.<sup>12</sup>

Wireless carriers, for instance, are extremely aggressive in demanding competitive pricing for backhaul services to and from radio towers, even in remote locations served by rate-of-return carriers. Such demands will increase dramatically as CAF Mobility Fund II furthers rural deployment of 4G services and as 5G services become a reality. Demand for 5G-based services will not be confined to urban environments, but will also be demanded by agricultural, small business, vehicular, and other wireless uses in rate-of-return carrier geographic markets.

In addition to commercial interests, schools, universities, and hospitals currently demand competitive broadband services in their rural locations. Ensuring broadband access in rural areas of the country is crucial, a fact that Chairman Pai has recognized throughout his tenure as Chairman.<sup>13</sup> The Commission has more recently taken action to facilitate broadband service in rural areas served by rate-of-return carriers by providing temporary relief from the effects of the budget control mechanism and increasing A-CAM support.<sup>14</sup> Indeed, Congress has frequently recognized the need to incentivize infrastructure investment in rural America to meet customer communications needs.<sup>15</sup>

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<sup>12</sup> The Commission recognized the harm to customers by deterring investment in IP-based communications services. *Id.*, ¶ 123.

<sup>13</sup> FCC Chairman Ajit Pai, Infrastructure Month at the FCC, March 30, 2017, FCC blog post at <https://www.fcc.gov/news-events/blog/2017/03/30/infrastructure-month-fcc> (last visited Jun. 14, 2018).

<sup>14</sup> *2018 Rate-of-Return Order*, ¶¶ 77-81. The Commission currently is considering additional changes to historical cost-based mechanisms, including the BCM, further increasing A-CAM support, and providing for a second A-CAM offer for current historical cost-based rate-of-return carriers. *Id.*, ¶¶ 103, *et seq.*

<sup>15</sup> *See, e.g.*, American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (2009).

Third, regulatory rigidity harms competition, thus imposing unreasonable costs on customers. The Commission recognized the serious costs that can result from improper ex ante regulation that sets prices inefficiently, which in turn sends incorrect price signals to the market, thereby that undermining competition.<sup>16</sup> In particular, business customers, and other institutional customers like schools, universities, and hospitals, which may not be able to obtain flexible pricing from a carrier operating pursuant to rate-of-return regulation, can be harmed by being unable to find less costly, more modern services to meet the needs of their students and patients.

Fourth, continued compliance with rate-of-return-based rate regulation, including tariffing, tariff review plans, and associated requirements, entails significant costs that are increasingly difficult for model-based rate-of-return carriers to recover. Particularly for carriers that are operating pursuant to their own individual tariffs, cost studies, cost support, and related regulatory compliance requirements are a significant expense. Because the *USF-ICC Transformation Order* made costs irrelevant to the computation of switched access charges,<sup>17</sup> the need to perform annual cost studies now applies only with respect to BDS. These undue costs impose lopsided burdens on model-based rate-of-return carriers facing competitors that do not operate under such regulatory conditions, such as competing CLECs or cable companies.

In addition, rate-of-return regulation imposes unreasonable burdens on model-based carriers because they have insufficient flexibility to respond to consumer needs and competition. A customer lost to competition imposes costs on a rate-of-return carrier because fewer remaining customers are left on the carrier's network to cover ongoing network and overhead costs, placing

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<sup>16</sup> *BDS R&O*, ¶¶ 101, 124.

<sup>17</sup> *USF-ICC Transformation Order*, ¶¶ 129, 847, *et seq.* See Section V.A., *infra*.

undue rate pressure on the remaining services.<sup>18</sup> The carrier is often unable to increase rates to replace these lost customers because either the service will become unaffordable for remaining subscribers or competition precludes such a price increase.

Although there may be some benefits to ex ante rate-of-return rate regulation (e.g., ensuring that rates are just and reasonable relative to a cost standard), the aforementioned costs now far exceed the benefits of rate-of-return regulation for model-based carriers. Rate-of-return principles might limit rates to costs, but the resulting rates can become unreasonable for customers because they are forced to bear an ever-increasing share of costs based on a dwindling number of customers. Costs imposed by rate-of-return regulation, such as the need for cost studies, can also be unreasonable for model-based rate-of-return carriers because rate-of-return regulation is now only applicable to a small subset of services (i.e., BDS), the customers of which are not in need of outdated regulatory protection.

## **II. PRICE CAP REGULATION IS A BETTER EX ANTE REGULATORY METHODOLOGY FOR MODEL-BASED CARRIERS IN THE ABSENCE OF COMPETITION.**

Price cap regulation of model-based carrier BDS services, absent a finding of effective competition, can be a more efficient form of regulation, and thus holds the promise of producing a better outcome for model-based rate-of-return carriers.<sup>19</sup> Such regulation could ensure

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<sup>18</sup> One of the primary reasons that rural voice and broadband services are more expensive than in urban areas is that there are fewer subscribers to fund a network that must span longer transmission paths. Further reducing already lower subscriber numbers simply reduces the denominator (number of subscribers) to divide into a relatively static numerator (costs of building and maintaining a network), making the resulting per subscriber cost rise as customers are lost.

<sup>19</sup> *NPRM*, ¶ 10. Although ITTA and USTelecom do not believe ex ante regulation should be applied to non-channel termination transport services, packet-based BDS, or TDM BDS above 50 Mbps, we discuss price cap regulation as a base for all BDS only in the event the Commission

reasonable rates and could be more advantageous to competition because price cap regulation generally mimics competitive pricing behavior. “[P]rice cap regulation is the most effective regime for ensuring that rates for non-competitive [BDS] are just and reasonable.”<sup>20</sup> Thus, price cap carrier BDS regulation strikes the correct balance where there is insufficient competition to justify elimination of ex ante price regulation.

**A. The Commission Should Adopt the Same Price Cap Rules Applicable to Price Cap Carrier BDS.**

The *NPRM* proposes to allow model-based rate-of-return carriers to opt into price cap regulation for their lower capacity TDM BDS offerings and TDM transport.<sup>21</sup> The application of price cap regulations to model-based rate-of-return BDS entails the same risk-reward conclusions afforded price cap carrier BDS.<sup>22</sup> Under traditional rate-of-return regulation, price caps, or market competition, carrier profits would be limited. Thus, allowing model-based rate-of-return carriers to elect price cap regulation of BDS would be in the public interest and protect customers.<sup>23</sup>

For baseline regulation of model-based carrier BDS offerings, the Commission should adopt the same modified price cap regulations that are in effect for price cap carrier BDS.<sup>24</sup> Applying the same BDS rules to both price cap and electing model-based rate-of-return carriers would be more efficient for the carriers and the Commission alike. As noted in Section IV, *infra*,

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does not find sufficient competition to exist in some markets and with respect to some products to eliminate ex ante regulation. *See* Section III, *infra*.

<sup>20</sup> *BDS R&O*, ¶ 179.

<sup>21</sup> *NPRM*, ¶ 9.

<sup>22</sup> *BDS R&O*, ¶ 12.

<sup>23</sup> Because A-CAM adopters are now accepting model-based support in place of their previous HCLS and/or ICLS support, the level of USF payments is unaffected.

<sup>24</sup> *NPRM*, ¶¶ 16-34.

the territories of electing model-based carriers resemble those of rural price cap carrier tariffs, which justifies equal treatment of BDS services. Thus, the Commission should establish a new 2 percent X factor (with no consumer dividend) and an inflation allowance, continue the allowance for exogenous costs and a low-end adjustment mechanism, and maintain existing price cap basket and band structures applicable to BDS, all of which are applicable to qualifying price cap incumbent LECs.<sup>25</sup> In the *BDS R&O*, the Commission concluded that its modified price cap rules were in the public interest, and would constrain prices and thus protect customers, even where insufficient evidence of competition existed.<sup>26</sup> The same public interest finding is equally applicable to model-based rate-of-return carrier BDS offerings.

**B. Initial Rate Levels Should Be Set at Existing Rate Levels with Special Rules Applicable to Carriers Exiting the NECA Pool.**

As proposed in the *NPRM*, the going-in rates for price cap regulation purposes should be then-existing tariffed rates.<sup>27</sup> For NECA pool members, going-in rates would be based on the pool rate times a net contribution/recipient factor.<sup>28</sup> These rules are consistent with methodologies used in the past when rate-of-return carriers have converted to price cap

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<sup>25</sup> *BDS R&O*, ¶¶ 236, 249. ITTA and USTelecom believe that a 2 percent X factor may well be higher than reasonable when applied to rate-of-return carriers because these carriers generally achieve lower productivity gains than much larger price cap carriers. The level of the X factor adopted in the *BDS R&O* has been challenged in court, and thus we reserve the option to further challenge a 2 percent X factor if this aspect of the *BDS R&O* is overturned in court. In all events, for regulatory efficiency's sake, the same X factor should apply to price cap carrier and electing model-based rate-of-return carrier BDS.

<sup>26</sup> *Id.*, ¶ 180.

<sup>27</sup> *NPRM*, ¶ 20. The carrier would then apply the prescribed X-factor and inflation measure to set the first year rates.

<sup>28</sup> *Id.*, ¶ 21.

regulation. Since these going-in rates are established based on rate-of-return principles,<sup>29</sup> including provisions based on the prudent actual costs of providing service, the Commission has a firm basis to presume that the going-in rates are reasonable.

**C. Phase One Pricing Flexibility Rules Should Be Applied to All Electing Model-Based Carrier BDS Offerings.**

As proposed in the *NPRM*, the Commission should apply Phase I price flexibility rules to services deemed to be non-competitive, just as it did in the price cap *BDS R&O*.<sup>30</sup> The ability to offer contract-based tariffs and volume and term discounts afforded under Phase I flexibility is essential in today's BDS marketplace to meet customer needs and respond to competition. Such offerings are necessary in rural counties in order to provide economical services to schools and libraries, to retain business customers, as well as to meet the needs of wireless backhaul services. Such flexibility will allow electing carriers to quickly respond to further competition that develops and is consistent with the regulatory paradigm adopted for price cap carrier BDS, where a county was found to be non-competitive.<sup>31</sup>

**D. The Commission Should Enact an Exception to the Price Cap All-or-Nothing Rule for Electing Carriers.**

The *NPRM* recognizes that adopting the rules as proposed would also require adoption of an exception to the price cap all-or-nothing rule to allow the electing rate-of-return carrier to remain a rate-of-return carrier for all purposes other than BDS regulation.<sup>32</sup> Currently, in order

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<sup>29</sup> See, e.g., *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report & Order, 5 FCC Rcd. 6786,, ¶ 230 (1990); *CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket No. 08-191, Order, 24 FCC Rcd. 4677, ¶ 14 (Wir. Comp. Bur., 2009).

<sup>30</sup> *NPRM*, ¶ 12.

<sup>31</sup> *BDS R&O*, ¶¶ 184-85.

<sup>32</sup> *NPRM*, ¶ 15.



to convert to price cap regulation, all of the company's study areas and rates would have to be converted to price caps, except for affiliates that are regulated as average schedule rate-of-return carriers.<sup>33</sup> The all-or-nothing rule was adopted initially to prevent gaming, where a carrier might be motivated to reduce costs allocated to its price cap-regulated study areas and then increase costs in its rate-of-return study areas where it could recover those costs pursuant to rate-of-return formulas. Such theoretical gaming is not possible in the current regulatory environment for model-based rate-of-return carriers. First, the remaining services subject to rate-of-return regulation are already price-constrained, precluding the ability to load costs on those service rates because (1) terminating switched access and intercarrier compensation rates are capped and are being phased out; (2) originating switched access and intercarrier compensation rates are capped; and (3) consumer broadband services are largely deregulated by companies that would be eligible to elect the proposed BDS rule. Second, since USF support for these carriers is model-based and no longer based on historical costs for these carriers, the original concern that carriers would shift costs no longer applies.

**E. The Commission Should Forbear From its Cost Assignment and Separations Rules for Electing Carriers.**

As the *NPRM* proposes, the Commission should forbear from application of its cost assignment rules, including its separation rules, consistent with the forbearance it granted to price cap carriers.<sup>34</sup> With incentive regulation, there is no longer a direct connection between costs and establishment of rates. Therefore, there is little justification for a continuation of cost assignment rules for electing carriers. The Commission should allow the Wireline Competition

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<sup>33</sup> 47 C.F.R. § 61.41.

<sup>34</sup> *NPRM*, ¶¶ 30-33.

Bureau, on delegated authority, to waive additional cost and separations-related obligations that may not be fully addressed in this order.<sup>35</sup>

For rate-of-return carriers, there has been a fifteen-year freeze in jurisdictional separations. Rate-of-return companies were given the option to adopt a voluntary freeze on Part 36 category relationships and were required to adopt a mandatory freeze on allocation factors. The FCC last year extended this very lengthy freeze for another eighteen months.<sup>36</sup> Both the initially voluntary category relationship freeze and the allocation factor freeze are now mandatory absent a waiver of the rules. Over the many years the freeze has been in effect, the category relationship freeze has created hardships for certain rate-of-return carriers, some of which have sought individual waivers. Filing and pursuing Commission action on these waivers entailed significant resources and cost burdens, and many of these waiver requests remain unresolved.<sup>37</sup> Failure to lift the category relationship freeze on a limited basis would distort cost recovery, which would harm carriers and thus should not be exported into price cap regulated rules.

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<sup>35</sup> For instance, there is no longer any justification for filing unseparated loop costs with NECA. *See* 47 C.F.R. § 54.1305. To illustrate, there is no basis to continue to require electing carriers to file High Cost Loop data. Such a filing is a by-product of the cost study used for establishing special access. For electing carriers, there would no longer be a requirement to perform a cost study, thus there is no foundation from which to extract the High Cost Loop data.

<sup>36</sup> *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report & Order, 32 FCC Rcd 4219 (2017). Delaying this relief until jurisdictional separations reform is complete would disserve BDS customers and model-based carriers alike. This limited one-time category relationships rule change will not undermine the orderly evaluation of the entire separations process. *Cf. id.*, ¶ 13 (denial of one-time lifting of category relationships freeze).

<sup>37</sup> *See, e.g., In The Matter of Petition by Eastex Telephone Cooperative, Inc. Pursuant to 47 C.F.R Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191, and 36.372-382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, Order, 27 FCC Rcd. 6357 (Wir. Comp. Bur., 2012).

The *NPRM* proposes that, as a condition to granting such forbearance, the electing carrier should file a cost study in order to develop revised BDS rates to correct the distortions associated with the freeze.<sup>38</sup> A full cost study should be optional with the carrier because changes to the freeze can often be justified without such burdensome filings. Bureau staff would in any event be able to review the proposed modification to ensure that the resulting rates are reasonable. This one-time mechanism should give a model-based carrier a predictable, certain mechanism to end the existing freeze and move to a more efficient regulatory paradigm. Finally, separations requirements should be modified or eliminated for model-based rate-of-return carriers in the same manner as they are for price cap carriers.<sup>39</sup>

**F. GAAP Accounting Should Be Applied to A-CAM Electing Carrier BDS.**

Because the electing rate-of-return carrier would have all of its interstate telecommunications services either (1) price-cap regulated, (2) constrained by terms of the rate-of-return intercarrier compensation rules, or (3) deregulated, there would be no significant reason to continue to maintain Part 32 accounting for the electing rate-of-return carrier. Therefore, in accordance with the *NPRM*,<sup>40</sup> as the Commission did for price cap carriers, the Commission should allow an electing model-based rate-of-return carrier to eliminate Part 32 accounting in

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<sup>38</sup> *NPRM*, ¶ 32.

<sup>39</sup> The Commission has conditionally forbore from the application of jurisdictional separation rules for price cap carriers. *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, *et al.*, Memorandum Opinion & Order & Report & Order & Further Notice of Proposed Rulemaking & Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, ¶ 36 n.119 (2013). Further modification of the separations rules remains pending before the Federal-State Joint Board on Separations for all price cap and rate-of-return carriers. *Id.*, ¶ 48. *See* Comments of ITTA-The Voice of America's Broadband Providers, CC Docket No. 80-286, 11 (filed May 24, 2017).

<sup>40</sup> *NPRM*, ¶ 34.

favor of GAAP accounting. The same election and regulations that currently apply to price cap carriers should apply to electing model-based carrier books.<sup>41</sup>

### **III. EX ANTE REGULATIONS OF CERTAIN BDS SERVICES SHOULD BE ELIMINATED.**

#### **A. Packet-based BDS and TDM BDS in Excess of a DS3 are Competitive on a Nationwide Basis and Should be Permissively Detariffed.**

Packet-based BDS and TDM BDS in excess of a DS3 are subject to effective competition throughout the nation, including in model-based rate-of-return carrier territories. The Commission in last year's *BDS R&O* found no "compelling evidence of market power" in price cap carrier provision of such services.<sup>42</sup> In particular, Ethernet services are rapidly becoming the end user customer's service of choice. Ethernet services in rate-of-return carrier territories are growing in number, while TDM-based services are generally on the decline, just as experienced in price cap carrier territories. TDS Telecom, for example, has on average experienced over the last four years a 10.7 percent increase in Ethernet connections, with a corresponding 11.9 percent average drop in low bandwidth TDM Services.<sup>43</sup> Great Plains Communication has experienced an average of 15.4 percent increase in Ethernet services over the last four calendar years, with a corresponding average decline in TDM services of 1.8 percent, which declines have accelerated

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<sup>41</sup> *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, *et al.*, Report & Order, 32 FCC Rcd 1735 (2017). In particular, a price cap carrier that eliminates Part 32 accounting must maintain then-existing accounting for pole attachment rates for a certain period of time, which would, under this proposed rule, be made applicable to an electing rate-of-return carrier.

<sup>42</sup> *BDS R&O*, ¶ 87.

<sup>43</sup> Declaration of Andrew Petersen, TDS Telecom, ¶ 2 (dated Jun. 18, 2018), attached as Exhibit A.

to -13.2 and -9.6 percent in the last two years.<sup>44</sup> Consolidated Communications average increase in Ethernet services over the last year is 38.3 percent, with an 11.4 percent decline in DS1 and DS3 TDM services over the same time period.<sup>45</sup> The Commission relied on the same type of market conditions to justify its refusal to adopt ex ante price regulation of Ethernet services offered by price cap carriers.<sup>46</sup> Most importantly, in the *BDS R&O*, the Commission noted that most price cap carrier Ethernet services had been provided pursuant to forbearance authority in recent years without apparent anti-competitive consequences, a factor that should be applied equally to model-based carrier provision of Ethernet.<sup>47</sup>

For higher bandwidth TDM services, the Commission made a similar conclusion to packet-based BDS based on nationwide data, rather than a market-by-market analysis. The Commission noted that

business data services with bandwidths in excess of the level of a DS3 generally experience reasonably competitive outcomes, and to the extent they do not today, will do so over the medium term even where a facility-based competitor has no nearby facilities. We come to this conclusion based on a record that shows almost no evidence of competitive problems in the supply of these higher bandwidth services, and which shows higher bandwidth opportunities are particularly attractive to competitive LECs.<sup>48</sup>

Because packet-based services are readily scalable, competitive LECs are “generally very willing to deploy such services beyond their footprints because they can expect to earn increasing

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<sup>44</sup> Declaration of Ken Pfister, Great Plains Communications, ¶ 2 (dated Jun. 18, 2018), attached as Exhibit B.

<sup>45</sup> Declaration of Michel T. Skrivan, Consolidated Communications, ¶ 2 (dated Jun. 18, 2018), attached as Exhibit C.

<sup>46</sup> See, e.g., *BDS R&O*, ¶ 69.

<sup>47</sup> *Id.*, ¶ 87.

<sup>48</sup> *Id.*, ¶ 16.

revenues from their initial investment with few additional costs.”<sup>49</sup> Of course, higher capacity TDM BDS already is large enough to motivate competitors to enter a market.<sup>50</sup>

In addition, the Commission concluded that ex ante regulation for packet-based and higher capacity TDM BDS services should not be imposed even with “insufficiently robust competition” because the regulations would be complex and not easily administrable.<sup>51</sup> And the Commission concluded that ex ante regulation could also have the deleterious effect of reducing innovation and investment.<sup>52</sup>

In the end, the Commission recognized that tariffing and ex ante price cap regulation should not be adopted even in the absence of a nearby competitor. Eliminating ex ante price regulation would accelerate the growth of packet-based and higher capacity TDM BDS, promoting competition and improving consumer choice. Such acceleration would be consistent with promoting the transition to an all-digital network, which the Commission has recognized has significant public interest benefits.<sup>53</sup> Given these findings, there is no reason to conduct

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<sup>49</sup> *Id.*, ¶ 88.

<sup>50</sup> *Id.*, ¶ 16.

<sup>51</sup> *Id.*, ¶ 87.

<sup>52</sup> *Id.*, ¶ 87.

<sup>53</sup> “Modernizing communications networks can dramatically reduce network costs, allowing providers to serve customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices. It also catalyzes further investment in innovation that both enhance existing products and unleash new services, applications and devices, thus powering economic growth. The lives of millions of Americans could be improved by the direct and spillover effects of the technology transitions, including innovations that cannot even be imagined today.” *Technology Transitions, et al.*, GN Docket No. 13-5, *et al.*, 29 FCC Rcd 1433, 1435, ¶ 2 (2014) (“*Technology Transitions Order*”).

additional granular market analysis to eliminate ex ante regulation for packet-based BDS and TDM-BDS greater than a DS3 for model-based rate-of-return carriers.<sup>54</sup>

**B. Transport Services are Competitive on a Nationwide Basis.**

The *NPRM* proposes different rules for transport services of model-based carriers than those adopted for price cap carriers.<sup>55</sup> That different treatment is not justified. The Commission recognized in last year's *BDS R&O* that "widespread competition in the market for [transport] services generally support using a deregulatory approach for TDM transport and other non-end user channel termination services."<sup>56</sup> The finding was applied throughout the nation to price cap carriers, with no granular market-by-market analysis that the Commission conducted for other types of BDS.

In the end, the Commission concluded that, even if a few census blocks did not have immediate competitive options, "greater harm—primarily manifested in the discouragement of competitive entry over time—would result if we were to attempt to regulate these cases than is expected under our deregulatory approach."<sup>57</sup> Eliminating disincentives to competition was considered so important, coupled with "sufficiently widespread" competition, that the Commission had "confidence that a combination of these factors will broadly protect against the risk of supracompetitive rates" in the short run.<sup>58</sup> "Refraining from pricing regulation for transport services nationally achieves the proper balance between precision and

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<sup>54</sup> Customers would have backstop protection by being subject to the general statutory protections of Sections 201, 202, and 208 of the Communications Act, 47 U.S.C. §§ 201, 202 & 208, to ensure reasonable and not unreasonably discriminatory prices, terms, and conditions.

<sup>55</sup> *NPRM*, ¶ 14.

<sup>56</sup> *BDS R&O*, ¶¶ 90, 85.

<sup>57</sup> *Id.*, ¶ 92.

<sup>58</sup> *Id.*

administrability.”<sup>59</sup> This same nationwide analysis applies with equal force to model-based rate-of-return carrier transport services.

#### **IV. THE EXISTING BDS COMPETITIVE MARKET TEST SHOULD BE APPLIED TO MODEL-BASED RATE-OF-RETURN CARRIERS.**

The *NPRM* asks whether a competitive market test (“CMT”) should be adopted that would apply specifically to lower bandwidth TDM BDS of model-based rate-of-return carrier territories.<sup>60</sup> The Commission asked whether it should adopt the same CMT as adopted for price cap carriers, whether it should conduct a further granular market investigation, or whether some other test should be adopted.

Based on the extensive record, in the *BDS R&O* the Commission concluded that TDM transport, all packet-based services, and TDM channel termination services that offer greater than 50 Mbps capacity should be substantially deregulated. For TDM end-user channel termination services below 50 Mbps, such as TDM-based DS1 and DS3 services,<sup>61</sup> the Commission established a test for determining whether a particular market, which the FCC designated at the county level, was competitive.<sup>62</sup> The Commission published a list of counties that meet the BDS competitive market test,<sup>63</sup> and committed to update the list no later than every

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<sup>59</sup> *Id.*, ¶ 93.

<sup>60</sup> *NPRM*, ¶ 35.

<sup>61</sup> See *BDS R&O.*, ¶ 86 & note 281 (description of TDM-based services under 50 Mbps).

<sup>62</sup> 47 C.F.R. § 69.803(b). A county was defined as competitive if “[e]ither 50 percent of the locations with business data services demand within the county are within one half mile of a location served by a competitive provider” or “75 percent of the census blocks within the county are reported to have broadband connection availability by a cable operator.”

<sup>63</sup> Public Notice, *Wireline Competition Bureau Publicly Releases Lists of Counties Where Lower Speed TDM-Based Business Data Services are Deemed Competitive, Non-competitive, or grandfathered*, WC Docket No. 16-143, *et seq.*, DA 17-463 (Wir. Comp. Bur., rel. May 15, 2017), county list published at <https://www.fcc.gov/bds-county-lists> (last viewed Jun. 18, 2018).



three years thereafter based solely on the presence of cable broadband connections in 75 percent of the census blocks within a county.<sup>64</sup> The presence of one facilities-based competitor was deemed sufficient to constrain a price cap carrier's provision of BDS and thus meet the competitive market test.<sup>65</sup>

The same marketplace analyses the Commission undertook for price cap carriers apply equally to BDS provided by model-based rate-of-return carriers, although the regulatory paradigm selected may be governed by somewhat different public interest considerations.<sup>66</sup> Customers in areas served by rate-of-return carriers demand modern technological capabilities that only IP-based networks can provide. Rate-of-return carriers have been experiencing growing competition for BDS from facilities-based carriers, particularly cable companies. Most importantly, rural America has a need for investment in broadband infrastructure so that rural areas can enjoy what is available in urban environments.<sup>67</sup> Indeed, the Commission repeatedly has recognized that making modern broadband communications available to all Americans, rural or not, is a primary goal.<sup>68</sup> In addition, the Communications Act mandates that the Commission promote the availability of communications services to all Americans that are similarly priced between urban and rural markets.<sup>69</sup>

Model-based rate-of-return carriers tend to serve more rural markets that may be less subject to competition for BDS than the markets generally served by price cap carriers.

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<sup>64</sup> 47 C.F.R. § 69.803(c).

<sup>65</sup> *BDS R&O*, ¶ 117.

<sup>66</sup> Those differences are entirely based on the different costs and benefits of price cap and rate-of-return regulation set forth in Section I, *supra*.

<sup>67</sup> *ROR CAF II R&O*, ¶ 16.

<sup>68</sup> *USF-ICC Transformation Order*, ¶ 5.

<sup>69</sup> 47 U.S.C. §§ 101, 254(b)(3).

However, typically price cap carriers' service territories also include significant swaths of rural America, a fact already recognized by the Commission.<sup>70</sup> Importantly, the rural areas served by price cap carriers are similar in all relevant ways to the rural areas served by rate-of-return carriers. Such conclusion has been confirmed by a study by Inteserra Consulting Group, Inc., commissioned by Consolidated Communications.<sup>71</sup> The study compares Consolidated study areas with neighboring ILECs, and concludes, based on demographic and competitive characteristics, that "the demographic and competitive conditions for Consolidated's ROR companies are very similar to surrounding price cap areas. . . ."<sup>72</sup> Thus, there is no reason to believe that rural counties served by price cap carriers differ from rural counties served by rate-of-return carriers with respect to the competitive BDS marketplace.

The Commission has been criticized in the past for failure to use its predictive judgment to infer market characteristics based on deployed competition in similarly situated circumstances.<sup>73</sup> In response to a court remand, the Commission, in making an "impairment" finding for purposes of mandating that an ILEC provide unbundled network elements for a particular service in a particular geographic market, decided to make inferences about the demonstrated competitive nature of one market based on factors such as the number of business lines or collocators, to predict competition in other geographic markets with similar

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<sup>70</sup> FCC, *Connecting America: The National Broadband Plan*, GN Docket No. 09-5, 2010 WL 972375, at 124-25 (Mar. 16, 2010).

<sup>71</sup> Inteserra Consulting Group, Inc. *Comparison of Characteristics of Consolidated Communications' Rate of Return Study Areas to Adjacent and Surrounding Price Cap Study Areas*, (dated June 15, 2018), attached as Exhibit D.

<sup>72</sup> *Id.*, at 1.

<sup>73</sup> *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 575 (D.C. Cir. 2004).

characteristics.<sup>74</sup> Here, the Commission should use its predictive judgment to make the inference that rate-of-return markets reasonably resemble the rural territories of price cap carriers.

Therefore, the existence of competition, such as the presence of cable broadband competition, in the rural areas served by model-based rate-of-return carriers warrant application of the same rules recently adopted for price cap carriers.

**V. THE COMMISSION SHOULD ESTABLISH TRANSITION RULES TO ENABLE MODEL-BASED CARRIERS TO ELECT PRICE CAP REGULATION FOR BDS.**

**A. Eligible Rate-of-Return Carriers Should be Allowed to Leave Switched Access Subject to Existing Rate-of-Return Regulations After the Election.**

Notwithstanding an election by a model-based rate-of-return carrier to adopt price cap regulation for BDS, there are a number of regulations applicable to rate-of-return carriers that should remain in place, as recognized by the *NPRM*.<sup>75</sup> Terminating switched access charges and terminating intercarrier compensation are being phased out in accordance with a schedule specific to rate-of-return carriers.<sup>76</sup> The Commission carefully evaluated the contribution that terminating intercarrier compensation revenues made to network development costs, and devised a detailed transition process to phase down terminating compensation rates over a period of time.<sup>77</sup> It replaced those revenues with other cost recovery mechanisms, particularly the Access Recovery Charge and CAF-ICC support. The Commission established these transition

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<sup>74</sup> *Unbundled Access to Network Element*, WC Docket No. 04-313, *et al.*, 20 FCC Rcd 2533, ¶ 44 (2005).

<sup>75</sup> *NPRM*, ¶¶ 13, 15.

<sup>76</sup> 47 C.F.R. § 51.909.

<sup>77</sup> *E.g.*, *USF-ICC Transformation Order*, ¶¶ 892-94.

mechanisms separately for rate-of-return and price cap carriers because rate-of-return carriers had a greater need for certainty about future revenue streams.<sup>78</sup>

We are now past the mid-point of the terminating rate reduction portion of that multiple-year transition process for rate-of-return carriers, whereas the price cap carrier transition is largely complete. In addition, originating switched access charges were originally set based on rate-of-return rules, and now are subject to a cap and other limitations imposed by the *USF-ICC Transformation Order*.<sup>79</sup> The rates for broadband service offered by some rate-of-return carriers to residential and small business consumers, termed consumer broadband loop service, are subject to the rate restructuring and corresponding regulations adopted by the Commission in 2016.<sup>80</sup> Some electing model-based rate-of-return carriers could choose to continue to participate in the NECA traffic sensitive pool for switched access services (which is subject to its own rules), provided that BDS services would be excluded.

All of these non-BDS rate-of-return regulated services are subject to their own detailed regulations and customer safeguards have already been adopted by the Commission. There is no reason to upset the business expectations and transition plans permitted by these regulations, which represent a balancing of competing interests and which were adopted pursuant to detailed public interest evaluations. Upsetting these carefully crafted regulations for model-based rate-of-return carriers would undoubtedly raise complex questions that would take time to evaluate and resolve and entail a real risk of unintended harm to rural rate-of-return carrier businesses,

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<sup>78</sup> Cf. *id.*, ¶ 879 (price cap) with *id.*, ¶ 891 (rate-of-return).

<sup>79</sup> *Id.*, ¶ 651.

<sup>80</sup> *ROR CAF II R&O*, ¶¶ 80, *et seq.* A number of rate-of-return carriers have already deregulated broadband internet access services, either by providing service on a detariffed or private carrier basis.

networks, and customers. In sum, requiring an electing model-based rate-of-return carrier to move all of its regulated interstate services to price cap regulation, thereby also modifying pricing and universal service receipts for these other interstate services, would be substantially burdensome, deter model-based rate-of-return carriers from electing more efficient regulation of BDS, and undermine investment incentives for building modern rural networks.

**B. The Eligible Rate-of-Return Carrier BDS Rules Should be Optional.**

The *NPRM* proposes that the revised rules be made optional in order to allow each model-based rate-of-return carrier to evaluate its own circumstances to determine whether the new regulations make sense for the provision of BDS in its service territory.<sup>81</sup> Given that BDS offered by rate-of-return carriers has been regulated pursuant to rate-of-return rules for a number of years, there would be little harm in allowing carriers to choose to continue these legacy regulations until the carrier's market circumstances justify the change to price cap regulation. Providing an option for model-based rate-of-return carriers between two regulatory paradigms is consistent with precedent.<sup>82</sup>

Under either traditional rate-of-return regulation, price caps, or market competition, carrier profits would be limited. In addition, just as for price cap carriers, model-based rate-of-return carrier BDS competition will protect customers in markets defined as competitive, and price cap regulation will continue to apply to protect customers in markets not subject to effective competition. Thus, allowing model-based rate-of-return carriers to elect price cap regulation of BDS would be in the public interest and protect customers.<sup>83</sup>

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<sup>81</sup> *NPRM*, ¶ 17.

<sup>82</sup> *See, e.g.*, 47 C.F.R. § 61.39.

<sup>83</sup> Because A-CAM adopters are now accepting model-based support in place of their previous HCLS and/or ICLS support, the level of USF payments is unaffected by the proposal.

### C. Timing of Election.

The Commission should permit model-based carriers to elect the new BDS regulatory paradigm as of January 1, 2019, or any July 1 thereafter. Allowing carriers to elect this option on January 1, 2019 would reduce burdens because cost studies are performed on a calendar year basis. Carriers electing this option effective January 1, 2019 would only have to complete the 2018 cost separations study and then would be relieved of that burden. Earlier implementation from the NPRM's proposal of July 1, 2019 would benefit customers and competition alike. The election should be made with at least 60 days' notice in order to provide the FCC and NECA with adequate notice to prepare for the change. Requiring an election 120 days prior to the effective date<sup>84</sup> is unnecessarily long and would undermine the consumer and market benefits to be achieved. ITTA and USTelecom have no objection to requiring the election be made at the holding company level, for all properties that receive model-based support or otherwise do not receive cost-based high cost support.<sup>85</sup>

If the Commission determines that certain model-based carrier BDS would not be subject to ex ante pricing regulation, ITTA and USTelecom agree that the same transition mechanisms applicable to detariffing of price cap carrier BDS should be applied to model-based carrier detariffing. The *NPRM* proposes to (1) permit but not require detariffing during a thirty-six month transition period, (2) institute a six month freeze of tariffed rates for end-user channel

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<sup>84</sup> See *NPRM*, Appendix A, proposed rule 61.50(b).

<sup>85</sup> For example, a few of Consolidated's rate-of-return study areas, which are treated as price cap study areas for high-cost universal service support purposes, declined the right of first refusal and continue to receive Frozen CAF I support, pending the outcome of the CAF II auction. Since these study areas do not receive cost-based high-cost universal service support, they should also qualify for the price cap BDS election. The *NPRM* proposal to make the election at the holding company level also suggests that these study areas should be included in the election.

terminations in deregulated counties, and (3) grandfather existing contractual and other long-term BDS arrangements.<sup>86</sup>

## VI. CONCLUSION

For the foregoing reasons, the undersigned request that the Commission promptly adopt BDS rules that would permit model-based rate-of-return carriers to elect new incentive and/or competitive pricing rules for BDS services as specified in these Comments.

Respectfully submitted,

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<sup>86</sup> *NPRM*, ¶ 59.