



April 13, 2017

VIA ELECTRONIC SUBMISSION

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

**Re:** *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans, WC Docket No. 15-247; Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593; Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143*

Dear Ms. Dortch:

On April 12, 2017, Assistant Chief Counsel Jamie Belcore Saloom and Regulatory Economist Jonathan Porat of the U.S. Small Business Administration Office of Advocacy, spoke with the following individuals from the Federal Communications Commission's Wireline Pricing Division regarding the above-referenced proceedings: Lynne Engledow, Shane Taylor, Joseph Price, Greg Capobianco, Belinda Nixon, Justin Faulb, Chris Koves, and David Zesiger.

Advocacy raised concerns, provided in more detail below, regarding a recently released draft final order which would deregulate pricing in a number of Business Data Service (BDS) markets if adopted.

### **About the Office of Advocacy**

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>1</sup> as

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<sup>1</sup> 5 U.S.C. §601 et seq.



amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>2</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>3</sup> The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.<sup>4</sup>

### **Concerns Regarding Competitive Market Test for certain Business Data Services**

Special Access, or Business Data Service (BDS) as it is now commonly called, is a critical input for many of the country's small businesses. The Office of Advocacy has consistently urged the FCC to take a close look at the special access market and pursue price regulation wherever there is insufficient competition to ensure the availability of affordable and reliable broadband for small business customers. We applauded the FCC's efforts to conduct its 2015 data collection on the special access market; however, the proposed competitive market test for Digital Signal 1 (DS1) and Digital Signal 3 (DS3) end user channel terminations may result in reduced choices for small businesses.

As the FCC moves forward, it is imperative that small businesses be able to keep the same level of service at the same or lower prices. The competitive market test for DS1 and DS3 end user channel terminations should be based on the feasibility of a competitor providing consumers the same services at comparable rates. As written, the competitive market test in the draft BDS order relies on product substitutions that could diminish the quality of service small businesses receive if an incumbent local exchange carrier (ILEC) were to raise prices significantly; it also relies on assumptions about incentives to build competing facilities that are contradicted in the record.

The competitive market test the FCC is planning to adopt for DS1 and DS3 end user channel terminations (BDS at speeds under 50 Mbps) would treat a county as competitive if 50 percent of locations are within a half mile of a location served by a competitive provider. The record contains affidavits from competitive local exchange carrier (CLEC) executives stating that building last mile facilities to compete with ILECs for DS1s and DS3s is not economically feasible. Simply put, demand for DS1s and DS3s may not support facilities based competition, but those services remain important to small business customers. Small businesses are the primary purchasers of these lower capacity services, and Advocacy is concerned that they may not have the same affordable choices for service that they currently have if competitors are unable to lease access from ILECs when the business case for building new facilities doesn't exist.

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<sup>2</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

<sup>3</sup> Small Business Jobs Act of 2010 (PL. 111-240) §1601.

<sup>4</sup> *Id.*

The competitive market test for DS1s and DS3s will also treat a county as competitive if 75 percent of census blocks in the county have a cable provider. As the FCC has noted, cable “best efforts” service is not the same product as BDS, and cable companies do not represent a significant segment of the BDS market at this time. It is conceivable that if prices for BDS increase significantly, a small business would choose to downgrade their service to best-efforts service to reduce costs. It is also conceivable that a business relying on BDS will pay monopoly rents in the absence of a real substitute or price regulation. Either result is problematic for small businesses. Small businesses want better broadband service at lower prices—they shouldn’t have to accept a lower level of service to reduce costs, or pay more for the same services.

We appreciate this opportunity to share our concerns on behalf of small businesses and urge the FCC to examine the impact that the draft BDS order might have on the availability and price of low capacity BDS. While small business demand may not drive BDS markets, low capacity BDS is an important input for many small business. Any FCC policies should ensure that small businesses continue to have choices to meet their demands.

Given Advocacy’s concerns, we respectfully request that the Commission delay voting on the draft final order so that stakeholders can have additional time to raise and resolve their concerns with the Commission. We also request that the Commission delay the effective date of any final order that is adopted to allow for an adjustment period once a final course of action by the Commission becomes certain.

If you have any questions or require additional information please contact me or Assistant Chief Counsel Jamie Belcore Saloom at (202) 205-6890 or by email at [Jamie.Saloom@sba.gov](mailto:Jamie.Saloom@sba.gov).

Sincerely,



*for* Major L. Clark III  
Acting Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration



Jamie Belcore Saloom  
Assistant Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

cc: Jay Schwarz  
Claude Aiken  
Amy Bender