



April 7, 2017

The Honorable Ajit Pai, Chairman
The Honorable Mignon Clyburn, Commissioner
The Honorable Michael O’Rielly, Commissioner

Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Ex Parte: *In the Matter of Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans, WC Docket No. 15-247; Special Access for Price Cap Local Exchange Carriers, WC Docket No. 05-25; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593.*

Dear Chairman Pai and Commissioners:

As the National Association of State Utility Advocates (“NASUCA”) has previously stated, “Consumers all across the country depend on reasonable [business data service] BDS rates – for their wireless services, and for the reasonable prices of other services that depend on BDS – like ATMs, credit card transactions and, indeed, long-distance telephone calls.”¹ Thus, NASUCA has, on behalf of consumers, consistently participated in the key proceedings identified above.²

The Federal Communications Commission (“FCC” or “Commission”) announced that a Report and Order and Second Notice of Proposed Rulemaking in these proceedings would be considered at the Commission’s meeting on November 17, 2016.³ The order was not, however,

¹ NASUCA/Maryland OPC Comments (June 28, 2016) at 1; NASUCA ex parte (November 4, 2016) at 1.

² See [https://www.fcc.gov/ecfs/search/filings?q=\(proceedings.name:\(\(05-25*\)\)%20OR%20proceedings.description:\(\(05-25*\)\)%20AND%20filers.name:\(NASUCA\)&sort=date_disseminated,DESC](https://www.fcc.gov/ecfs/search/filings?q=(proceedings.name:((05-25*))%20OR%20proceedings.description:((05-25*))%20AND%20filers.name:(NASUCA)&sort=date_disseminated,DESC).

³ <https://www.fcc.gov/news-events/events/2016/11/november-2016-open-commission-meeting>.

discussed at the November 17 meeting, and has not been formally addressed since then, but is on the tentative agenda for the FCC's April 20, 2017 agenda.

The latest FCC action in this proceeding was the grant of access to confidential information to the California Public Utilities Commission.⁴ The data collection is the largest, but most focused, such collection in many years. The data must not be wasted.

Based on that data, NASUCA strongly supports the March 30, 2017 ex parte from Consumer Federation of America and Public Knowledge ("CFA/PK"), stating the Commission should

heed the evidentiary record in this proceeding and ... reject proposals from the dominant incumbent providers of business data services (BDS) that would deregulate a market in which they have massive market power. Consumers are already overcharged in this market; allowing incumbent providers to raise prices and increase their profits through deregulatory measures would make matters worse. The resulting overcharges would rob consumers of tens of billions of dollars per year.⁵

Contrary industry ex partes continue to be filed, including the March 13, 2017 submission from AT&T, called a "proposal to finally resolve [this] decade-old review."⁶ AT&T's key opening claim that the BDS market is competitive⁷ had been refuted just days earlier by U.S. Telepacific.⁸ And AT&T's proposed standard (that an ILEC area is competitive where 80% of the locations in an MSA have competition within 2,000 feet⁹) ignores the cost of deploying facilities to serve customers over that 2,000 feet: "[T]he record... shows that the cost of extending lines to additional buildings is prohibitive, at even relatively short distances. Competition has not developed precisely because this cost barrier to entry is so high."¹⁰ The record in this proceeding show that most locations have, at best, duopoly or oligopoly service,¹¹ insufficient to constrain prices.

⁴ https://apps.fcc.gov/edocs_public/attachmatch/DA-17-252A1.pdf (March 15, 2017).

⁵ CFA/PK ex parte at 1.

⁶

[https://ecfsapi.fcc.gov/file/10313886703692/AT%26T%20Letter%20Proposing%20Resolution%20to%20BDS%20Proceeding%20\(Redacted\).pdf](https://ecfsapi.fcc.gov/file/10313886703692/AT%26T%20Letter%20Proposing%20Resolution%20to%20BDS%20Proceeding%20(Redacted).pdf).

⁷ Id. at 1.

⁸

https://ecfsapi.fcc.gov/file/10310020221908/FINAL_TPAC%20Notice%20of%20Meeting%20with%20WCB%20Staff.pdf. See also <https://ecfsapi.fcc.gov/file/103200840016744/CTL%20FTR%20NonDom%20Ex%20Parte%20Letter%20003-20-17%20PUBLIC-REDACTED.pdf>, at 12.

⁹ Id. at 4.

¹⁰ CFA/PK at 2.

¹¹ See Consolidated Communications ex parte (October 29, 2016); see also CFA/PK at 3.

Further, as NASUCA previously stated, a “technologically-neutral” approach requires rejection of the cable industry position that their BDS services should be free from regulation.¹² These companies do not qualify as new entrants; cable BDS services are no longer nascent.¹³ Further, the Commission must reject the cableco arguments that there should be no regulation of BDS service offered on a private-carriage basis.¹⁴ The Commission has found BDS to be a Title II service; a carrier’s definition cannot control that conclusion.¹⁵

As CFA/PK state, “The record does not support a finding that BDS markets are competitive and that additional deregulation is warranted. In fact, the opposite is true. Additional deregulation will lead to higher prices on business broadband customers, creating substantial deadweight loss throughout the economy, raising costs for consumers, and reducing economic growth.”¹⁶

NASUCA urges the Commission to expeditiously create just and reasonable BDS rates, to the benefit of consumers, by adopting rules consistent with NASUCA’s position expressed in comments and ex partes.

Respectfully submitted,

David Springe, Executive Director
NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

David C. Bergmann
Counsel
3293 Noreen Drive
Columbus, OH 43221
Phone (614) 771-5979
david.c.bergmann@gmail.com

¹² NASUCA ex parte (November 4, 2016) at 1, citing NCTA – The Internet and Television Association (“NCTA”) ex parte (October 19, 2016); Uniti Fiber ex parte (October 19, 2016).

¹³ See Comcast ex parte (October 20, 2016); American Cable Association (“ACA”) ex parte (October 19, 2016).

¹⁴ See Comcast ex parte (October 21, 2016); ACA ex parte (October 16, 2016).

¹⁵ See Verizon ex parte (October 20, 2016).

¹⁶ CFA/PK at 3.