Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Price Cap Business Data Services	)	WC Docket No. 21-17
	)	
Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers	)	WC Docket No. 17-144
	)	

COMMENTS OF INCOMPAS

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INCOMPAS, by the undersigned, respectfully submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") *Third Further Notice of Proposed Rulemaking* ("*FNPRM*") seeking comment on further deregulation of business data services ("BDS") in light of marketplace and technological changes and consistent with recent Executive Orders.[1]

I. INTRODUCTION AND SUMMARY

INCOMPAS, the internet and competitive networks association, represents providers that deliver broadband, voice, data, video, and competitive network services to residential, business, institutional, and government customers across the United States. Our members are committed to fostering innovation, promoting competitive markets, and ensuring that their consumers, whether they be residential or enterprise, benefit from affordable and diverse communications services. The association has consistently advocated for policies that promote genuine competition in the

[1] *See Price Cap Business Data Services, Regulation of Business Data Services in Rate-of-Return Local Exchange Carriers*, WC Docket Nos. 21-17, 17-144, Notice of Proposed Rulemaking, Third Further Notice of Proposed Rulemaking, and Order, FCC 25-44 (rel. Aug. 8, 2025) ("*FNPRM*").

BDS market.[2] While we support regulatory flexibility where true competition exists and forward-looking policies that recognize technological progress, we remain concerned that the Commission's approach to defining competitive markets does not reflect actual marketplace dynamics. Furthermore, the proposals in the *FNPRM* to detariff remaining end user channel termination and transport services risk prematurely removing important consumer protections in markets where incumbent carriers retain significant market power.

In these comments, INCOMPAS explains how the Commission's competitive market test remains a fundamentally flawed measure of competition, inappropriately allows monopolies or duopolies to qualify as competitive markets, and fails to realistically assess barriers to competitive entry. As drafted, the Commission's proposals would further erode competition in the BDS market, particularly in areas where competitive providers have limited or no access to last-mile facilities. Deregulating these markets prematurely, without collocation requirements or adequate transition periods, risks exposing American businesses, schools, hospitals, and government agencies to higher prices and fewer competitive choices. Given the significant marketplace uncertainties and the inadequacy of the current competitive market test, INCOMPAS urges the Commission to take no further action in this proceeding. Further deregulation should not proceed until the Commission establishes more rigorous competitive benchmarks and verifies that actual market conditions meet those standards.

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[2] *See*, *e.g.*, Comments of INCOMPAS, *Office of Economics and Analytics Seeks Comment on the State of Competition in the Communications Marketplace*, GN Docket No. 22-203, 21-24 (filed July 1, 2022) (noting significant price increases in BDS services after the *2017 BDS Order*); Comments of INCOMPAS, WC Docket Nos. 18-141, 17-144, 16-143, 05-25 (May 9, 2019) (discussing, *inter alia*, the lack of nationwide competition in markets for DS1 and DS3 business data services transport).

If the Commission proceeds with further deregulation in counties that cannot currently be considered competitive, INCOMPAS urges the Commission to adopt several critical safeguards. Principally, the Commission should adopt meaningful collocation requirements for ILECs to facilitate competitive entry. Robust collocation requirements are essential to enable competitive carriers to access the facilities necessary to serve their enterprise customers, particularly in areas where building duplicative infrastructure is economically infeasible. Furthermore, INCOMPAS urges the Commission to establish a holistic framework for IP interconnection and stabilize DS1/DS3 pricing to ensure an orderly transition from TDM to IP that safeguards 911 call delivery while the NG911 transition is ongoing.

Additionally, the Commission should establish a 36-month transition period for mandatory detariffing of remaining regulated end user channel termination and transport services rather than the proposed two-year timeframe. A 36-month transition period is necessary to allow competitive carriers to adjust their business models, address substantial infrastructure deployment challenges, and ensure orderly market evolution consistent with the Commission's precedent in other major regulatory transitions.

These measures reflect lessons learned from prior deregulatory proceedings and are designed to promote sustainable, facilities-based competition rather than precipitous change that disrupts critical communications services. Furthermore, they would be essential to ensure that competitive carriers, businesses, anchor institutions, and governmental agencies have adequate time to adjust to significant policy changes without disruption to critical communications services.

II. THE COMMISSION'S STATED RATIONALE FOR DEREGULATION DOES NOT ALIGN WITH CURRENT BDS MARKET CONDITIONS

In the *FNPRM*, the Commission bases its deregulation proposals on marketplace and technological changes, as well as consistency with recent Executive Orders.[3] While INCOMPAS supports regulatory modernization where appropriate, the Commission must ensure that deregulation occurs only where genuine competition exists or can realistically develop.

A. The Commission Should Not Rely on its Flawed Competitive Market Test in Determining Whether to Deregulate End User Channel Termination or Transport Services

INCOMPAS and its competitive carrier members have previously opposed the Commission's deregulatory efforts in BDS proceedings given our concerns that the Commission's flawed competitive market test allows an actual monopoly or the potential of a duopoly to meet the definition of a competitive market.[4] INCOMPAS maintains that this approach does not realistically gauge whether meaningful competition exists or whether there is genuine potential for competitive entry.

A truly competitive market requires multiple service providers with the ability to offer comparable services at competitive prices. The Commission's test, however, sets the bar far too low. Allowing a market with one or two providers to be classified as "competitive" ignores fundamental economic principles about market power and competitive dynamics. In markets with only one or two providers, like the ones identified by the Commission in the *FNPRM*, it has meant that consumers lack meaningful choice and incumbent carriers face little pressure to

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[3] *See FNPRM* at para. 16.

[4] *See Ex Parte Notice* of INCOMPAS, WC Docket Nos. 15-247, 05-25, 16-143, RM-10593, 1-2 (filed Apr. 13, 2017) (highlighting record evidence that the Commission's competitive market test would permit monopoly or the potential of duopoly in locations with BDS demand).

innovate, improve service quality, or offer competitive pricing. INCOMPAS members report that competition in the regulated counties identified by the Commission remains overwhelmingly concentrated and this absence harms enterprise customers, anchor institutions, and government agencies that depend on reliable, affordable business data services to operate effectively.

Equally concerning is the Commission's approach to evaluating the potential for competitive entry. The barriers to entry in BDS markets are substantial and well-documented by INCOMPAS.[5] Building telecommunications infrastructure requires enormous capital investment, access to rights-of-way, interconnection facilities, and years of construction. The Commission's competitive market test does not adequately account for these realities. Simply because a competitor *could theoretically* enter a market does not mean competitive entry is economically viable or likely to occur within a timeframe that would discipline incumbent behavior. Without a realistic assessment of entry barriers and incumbent advantages, the Commission risks deregulating markets where competition will never materialize, leaving customers vulnerable to monopoly pricing and service degradation.

B. Marketplace and Technological Changes in the BDS Markets Does Not Reflect Levels of Competition That Might Otherwise Warrant Further Deregulation

The Commission points to various marketplace changes as justification for deregulation. However, marketplace evolution does not automatically equate to competitive markets. In many areas, particularly outside major metropolitan centers, incumbent carriers continue to dominate BDS. The presence of fiber or other advanced infrastructure does not necessarily mean multiple providers offer competitive services to business locations. The Commission must look beyond

[5] *See* Letter of Karen Reidy, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 15-247, 05-25, 16-143, RM-10593 (filed Mar. 29, 2017) (discussing generally the status of the BDS marketplace and how the Commission's record indicated that granting price flexibility to ILECS in the past has resulted in considerable rate increases by those carriers).

aggregate statistics about network deployment and examine whether businesses at specific locations have meaningful choices among service providers. Market concentration data, actual competitive offerings, and pricing trends provide more reliable indicators of competition than theoretical assessments of network capability.

Technological advancement has undoubtedly transformed telecommunications, however, technological change alone does not eliminate incumbent market power, particularly where incumbents control essential facilities and customer relationships built over decades. The Commission should ensure technological change leads to meaningful competition and protections for critical services like 911 calling, not just use the fact that technological change is occurring as blanket justification for removing protections before competition actually emerges. Regulatory policy should encourage technology deployment by multiple providers, ensuring that technological advancement translates into competitive choices for customers.

C. Commission Implementation of Executive Orders Should Align With Competition and Consumer Protection Commitments

INCOMPAS recognizes the Commission's obligation to consider relevant Executive Orders. Executive Orders 14192 and 14219 emphasize the federal government's commitment to ensuring robust competition, consumer protection, and affordable broadband access.[6] INCOMPAS urges the Commission to align this proceeding with these broader policy objectives. Premature deregulation risks undermining these goals by raising prices for business customers and anchor institutions, reducing incentives for ILECs to innovate or improve service quality, and creating further disparities between urban and rural markets. The FCC should ensure that its

[6] *See* Exec. Order 14192 of January 31, 2025, 90 Fed. Reg. 9065 (Feb. 6, 2025). *See also* Exec. Order 14219 of February 19, 2025, 90 Fed. Reg. 10583 (Feb. 25, 2025).

framework encourages sustainable competition rather than entrenching monopolies or duopolies as a result of these deregulatory efforts.

Promoting competition and reducing unnecessary regulation does not require eliminating safeguards in markets where competition remains nascent or non-existent. The most effective implementation of pro-competition directives involves removing regulatory barriers to competitive entry while maintaining protections against anticompetitive conduct by dominant incumbents. The collocation requirements and adequate transition period that INCOMPAS advocates for below align with these principles in that they facilitate competitive entry while ensuring orderly market evolution.

III. MEANINGFUL COLLOCATION ACCESS AND INTERCONNECTION REQUIREMENTS MUST BE A CONDITION OF ANY FURTHER DEREGULATION

If the Commission proceeds with deregulation in additional counties, it must include robust collocation requirements for ILECs and clarify the rules of the road for IP-based interconnection. Collocation is essential infrastructure that enables competitive carriers to serve customers efficiently and cost-effectively. As provided under Section 251 of the Communications Act, collocation allows competitive carriers to place their equipment in incumbent carrier facilities, providing a critical point of interconnection and reducing the need for duplicative infrastructure.[7] Without guaranteed collocation access and a holistic IP interconnection framework, competitive carriers face insurmountable barriers to serving customers, including those relying on them for 911 call delivery, in many locations, particularly in areas where building entirely separate facilities is economically infeasible.

[7] *See* 47 USC 251(c)(6).

In markets where the Commission removes pricing regulation, ILECs have both the incentive and ability to foreclose competitive entry through various means.[8] Ensuring robust collocation access provides a critical check against such behavior. When competitive carriers can efficiently interconnect with incumbent networks and access customers, ILECs face meaningful competitive pressure even in markets with relaxed pricing regulation. Conversely, without guaranteed collocation access and interconnection, deregulation creates a perfect storm—ILECs gain pricing flexibility while simultaneously maintaining the ability to deny competitors the infrastructure and network access necessary to compete effectively. This outcome serves neither the public interest nor the Commission's stated goal of promoting competition.

Reliance on ILEC willingness to act in "good faith"[9] and "collaborate"[10] has proven misplaced since initial BDS regulation, and now we face a threat to retaining critical 911 functionality as the NG911 transition remains delayed.[11] As Bandwidth explained recently to

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[8] *See e.g.*, Comments of Intrado, WC Docket No. 25-209, 25-208 at 9 (filed Sept. 29, 2025) ("Intrado Comments") ("ILECs leverage their network dominance to control BDS contracting through month-to-month terms that allow it to raise rates or discontinue circuits with no warning whenever it suits them and to deny long-term contracts with price stability.").

[9] *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, paras. 102, 170 (rel. 2017) ("*2017 BDS Order*") (rejecting concerns about the "potential spike in prices in areas deregulated as a result of the competitive market test" and entrusting "carriers to act in good faith to develop solutions to ensure rates are just and reasonable").

[10] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order, FCC 18-74, 33 FCC Rcd 5660, ¶ 38 (rel. 2018) ("2018 BDS Order") (citing 2017 BDS Order at 11149, ¶ 48) (declining to depart from 2017 BDS Order's expectation that "carriers will 'continue to collaborate with their [enterprise or government] customers, especially utilities and public safety and other government customers, to ensure that they are given sufficient time to accommodate the transition to [next-generation services] such that key functionalities are not lost during this period of change.'").

[11] *See* Intrado Comments at 2-3 ("ILECs are not, as the Commission instructed in *2018 BDS Order*, collaborating with public safety customers to ensure that critical 911 functionality remains available as the country transitions to NG911.").

Commission staff, "efforts to move local exchange TDM traffic to its commercial IP interconnection agreements have so far been rebuffed and ILECs have not made IP interconnection available to Bandwidth with the ILECs' TDM local exchange interconnection services, which critically include the delivery of 911 calls to selective routers."[12] And even where Ethernet collocation is deployed, "ILECs will still require DS1 cross connections to the collocation"[13]—which are slow to turn up, astronomically priced by ILECs, or increasingly unavailable as ILECs retire TDM. While imposing a requirement to connect trunk-side via DS1s/DS3s, ILECs are also astronomically raising costs while at the same time often being the sole remaining provider of DS1s as wholesale resellers have exited the market.[14]

"Competitive carriers are being compelled to rely on legacy technologies that incumbents are abandoning, while being denied access to modern, scalable alternatives."[15] Without Commission intervention to guarantee collocation and interconnection rights for competitive carriers and to stabilize pricing, not only is competition in commercial voice at risk, but so is 911 call delivery.

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[12] *Ex Parte Notice* of Bandwidth, WC Docket Nos. 25-209, 25-208, 21-17, 17-144, 17-97, 13-97; PS Docket No. 21-479. at 1 (filed Sept. 18, 2025); *see also Ex Parte Notice* of NCTA—The Internet & Television Ass'n, PS Docket No. 21-479; WC Docket Nos. 17-97, 13-5, 10-90, 04-36; GN Docket No. 13-5, at 1 (filed June 11, 2025) ("[T]he continued need to use TDM equipment for those network interconnections imposes ongoing and unnecessary costs and inefficiencies on IP-based network providers by requiring them to either maintain their own TDM equipment or use a third party to facilitate the TDM interconnection.").

[13] *Id.*

[14] *See e.g.*, Comments of Bandwidth, PS Docket Nos. 21-479, 13-75, at 7 (filed Aug. 4, 2025) ("In a central California market, in March 2024, Bandwidth was paying about $6,000 in monthly combined mileage and MUX costs, while in March 2025, Bandwidth paid around $22,000 monthly for the same services. Bandwidth has been unable to determine any logical or technological reason that could be associated with these cost increases.").

[15] Comments of INCOMPAS, WC Docket Nos. 25-209, 25-208 (filed Sept. 29, 2025).

A. Collocation Requirements Must Be Enforceable and Comprehensive

Any collocation requirement adopted by the Commission must be sufficiently robust to serve its intended purpose. At a minimum, such requirements must guarantee access to ILEC central offices and other network facilities where competitive carriers need to interconnect or terminate services. Without assured access to these critical facilities, competitive carriers cannot effectively reach customers, particularly in areas where ILECs control the only practical points of interconnection.

Beyond mere access, the terms and conditions governing collocation must be reasonable and non-discriminatory. ILECs should not be permitted to impose requirements that effectively function as barriers to competitive entry, whether through unreasonable space limitations, discriminatory application processes, or technical requirements that favor the incumbent's own operations. The Commission must ensure that collocation arrangements do not become tools for anticompetitive conduct.

Pricing for collocation services is another critical element. The Commission should require cost-based pricing at established Total Element Long-Run Incremental Cost ("TELRIC") rates for collocation to prevent ILECs from using excessive charges as an economic barrier to competitive entry. When collocation costs are inflated beyond reasonable levels, they effectively negate the benefits of access, pricing competitive carriers out of markets where they could otherwise serve customers effectively.

Timely provisioning standards are equally essential. Competitive carriers operate in a dynamic business environment where customer demands and competitive opportunities emerge rapidly. If collocation requests languish for months in ILEC provisioning queues, competitive

carriers lose business opportunities and customers face service delays. As discussed below, the Commission should establish clear timeframes for provisioning collocation space and hold ILECs accountable for meeting these standards.

The Commission must establish clear dispute resolution mechanisms for situations where ILECs deny or delay collocation requests. Without effective recourse, even the most detailed collocation requirements become unenforceable in practice. Competitive carriers need access to expedited processes that can quickly resolve disputes and prevent ILECs from using procedural delays as competitive weapons.

Without these elements working together, collocation "requirements" become meaningless, offering no real protection for competitive entry. The Commission must establish clear, enforceable standards that ensure collocation serve its intended purpose: facilitating genuine competition.

B. The Commission Should Establish a Holistic IP Interconnection Framework and Stabilize DS1/DS3 Pricing

INCOMPAS members would prefer to interconnect via IP, but there is no holistic regulatory framework for such interconnection at this time. As INCOMPAS has noted in other proceedings, our members continue to face significant ILEC-driven roadblocks in transitioning interconnection agreements to IP.[16] This experience is echoed throughout the record by others in

[16] Comments of INCOMPAS, WC Docket Nos. 25-209, 208, at 3 (filed Sept. 29, 2025) (citing Letter of INCOMPAS, NTCA—The Rural Broadband Association, the Cloud Communications Alliance, and the Voice on the Net Coalition, CG Docket No. 17-59, WC Docket No. 17-97 (filed Feb. 13, 2024). Last year, INCOMPAS joined the Cloud Communications Alliance, the Voice on the Net Coalition, and NTCA—The Rural Broadband Association calling for the Commission to address the lack of an IP interconnection framework. The joint associations noted that "[w]ithout a framework, providers are not incented to exchange voice traffic in IP, undermining the robustness and security of our telecommunications infrastructure." INCOMPAS urges the Commission to "proactively examine and endorse measures that promote IP interconnection.").

the industry. For example, NTCA noted earlier this summer that, often, "requests made to tandem operators to interconnect in IP for voice traffic are rebuffed."[17] INCOMPAS members and others similarly situated thus have "a forced dependence on overpriced, deteriorating [TDM] facilities that not only inhibit competition but threaten service continuity for mission-critical communications, including emergency 911 traffic."[18] The Commission must thus establish a clear, enforceable framework for IP interconnection that covers local exchange traffic and, in particular, public safety obligations.

The Commission should also stabilize pricing for DS1/DS3s used to exchange voice traffic and deliver 911 calls. Unfortunately, incumbent prices charged to competitive providers are increasing exponentially almost month-on-month where these have been deregulated in the past, with no meaningful alternative for competitive carriers to turn to in order to continue to serve customers (including those with 911 calls transiting the network). The record across proceedings is robust on the TDM circuit cost increases experienced across the country.[19] For example, Intrado noted in a trend analysis that TDM circuits are subject to "extreme and unpredictable price hikes," "including monthly costs soaring from $350 to $20,000 on dozens of circuits or even over $50,000 on a few circuits."[20] And Bandwidth reported that the price for a

[17] Comments of NTCA—The Rural Broadband Ass'n, WC Docket No. 17-97, at 13 (filed July 16, 2025).

[18] Comments of INCOMPAS, WC Docket Nos. 25-209. 25-208 at 4-5 (filed Sept. 29, 2025).

[19] *See supra n* 2.

[20] *See* Intrado Comments at 7.

DS3-to-DS1 multiplexer will rise from $2,696.66 per month (as of October 2022) to an astonishing $58,344.29 per month by June 2025.[21]

By establishing a holistic IP interconnection framework and stabilizing DS1/DS3 prices (at a minimum while the NG911 transition is ongoing),[22] the Commission can ensure that critical 911 services remain uninterrupted and that the U.S. rapidly and consistently ushers in the IP-based communications era.

IV. A 36-MONTH TRANSITION PERIOD FOR DETARIFFING OF END USER CHANNEL TERMINATION AND TRANSPORT SERVICES IS ESSENTIAL AND CONSISTENT WITH COMMISSION PRECEDENT

INCOMPAS has previously emphasized the critical need for adequate transition time should the Commission modify its BDS regulatory structure. In previous BDS deregulatory proceedings, INCOMPAS specifically advocated for a minimum three-year transition period, and we reiterate that position in the instant proceeding.[23] The Commission's proposal of a two-year transition is insufficient given the magnitude of the changes contemplated and their impact on multiple stakeholders.

A. Competitive Carriers Need Time to Adjust Business Models

Competitive carriers have built their business models around the availability of wholesale last-mile inputs under the current regulatory framework. These inputs enable competitive

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[21] *See* Letter of Tamar E. Finn, Counsel to Bandwidth Inc. and Bandwidth.com CLEC, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 25-209, 25-208, 21-17, 17-144, 17-97, 13-97, et al. (filed Sep. 18, 2025) ("Bandwidth Ex Parte Letter").

[22] Comments of NENA, WC Docket Nos. 25-209, 25-208 at 2 (filed Sept. 29, 2025) ("NENA notes that NG9-1-1 transitions may take years to accomplish").

[23] *See* Letter of John Nakahata, Counsel to INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-144, *et al*., 2 (filed July 3, 2019) (proposing the Commission provide an additional three year transition period in remote, non-urban areas with slower evolution of actual and potential transport competition).

carriers to serve customers in areas where building entirely new infrastructure is economically impractical. When the Commission deregulates these services, competitive carriers lose access to crucial inputs at predictable, reasonable rates.

Adjusting to this change requires substantial business planning and investment. Competitive carriers must first evaluate which customer locations they can continue to serve profitably under the changed regulatory landscape. This analysis alone requires detailed financial modeling and market assessment across potentially thousands of customer locations. Following this evaluation, carriers must identify alternative infrastructure solutions, which may include potential network builds, partnerships with other carriers, or alternative technologies that can substitute for the previously available wholesale inputs.

The business model adjustments extend to contractual relationships as well. Competitive carriers must renegotiate customer contracts to reflect changed cost structures, a process that often involves complex commercial negotiations and, for many enterprise customers, formal procurement processes. For many organizations, business data services represent a significant operational expense, and unexpected cost increases can strain budgets and force difficult tradeoffs with other priorities. Simultaneously, carriers must secure financing for new infrastructure investments, which requires developing detailed business cases, engaging with lenders or investors, and potentially restructuring existing financial arrangements to accommodate new capital requirements.

The physical infrastructure challenges represent perhaps the most time-consuming aspect of this transition. Carriers must obtain necessary permits and rights-of-way for new construction, a process that can involve multiple governmental jurisdictions and private property owners. Once permits are secured, carriers must complete actual construction of alternative

facilities, which depends on contractor availability, equipment procurement, and favorable weather conditions. Finally, carriers must migrate customers to new network infrastructure, a technically complex process that must be executed without service disruptions.

Each of these steps takes can take considerable time. A two-year transition period simply does not provide sufficient runway for competitive carriers to complete this complex process without disrupting service to existing customers. A 36-month transition period provides realistic time for addressing these challenges. It allows recommendations from infrastructure-focused initiatives to take root and produce results. It gives Congress, the Commission, and local governments time to identify and address barriers to competitive infrastructure deployment.

With a 36-month transition, all stakeholders can adapt without unnecessary disruption to critical communications services when transitions are properly managed. BDS supports essential functions for enterprises, institutions, and government agencies. Service disruptions or dramatic cost increases can have serious consequences for these customers and the communities they serve. A measured transition protects against such disruptions while still achieving the Commission's deregulatory objectives. The goal should be sustainable, facilities-based competition that serves customers effectively over the long term. A rushed transition risks undermining this objective by forcing premature decisions and creating market instability.

B. Precedent Supports a Three-Year Transition Period

The Commission has recognized the need for substantial transition periods in other rulemakings implementing significant policy changes. When modifying long-standing regulatory frameworks on which industry participants have relied, the Commission has appropriately provided multi-year transitions to prevent market disruption. For example, the *Technology Transitions Order* established important customer and competition protections during

technological transitions. The principles underlying that order, such as protecting consumers and ensuring continuity of service during significant industry changes, apply with equal force to the BDS deregulation contemplated in the *FNPRM*.[24] Further, as the Commission points out in the *FNPRM*, it adopted longer transition periods—36-months—in both the *Price Cap BDS Order*[25] and the *Rate-of-Return BDS Order*.[26] In the *Rate-of-Return BDS Order*, the Commission found that 36-months would "ensure that small businesses and purchasers have time to adjust to the new regulatory framework."[27] In the UNE proceeding, the Commission also found longer transition periods warranted, including, a 42-month transition for UNE DS1 Loops and 36-months for existing UNE DS3 loops.[28] Given the remote location of the counties in question, and the amount of time that it will take for providers to establish new arrangements with the BDS provider, build to the area, and co-locate or interconnect, a 36-month transition is justified.

Industry reliance on the Commission's current policies compels a meaningful transition period. Competitive carriers have invested billions of dollars in business models predicated on the existing regulatory framework. Business customers have made long-term commitments

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[24] *See Technology Transitions et al*., GN Docket No. 13-5 *et al*., Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 81 FR 62632 (2016).

[25] *See*, *e.g*., *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., 32 FCC Rcd 3459, 3533 para. 167 (2017) ("*Price Cap BDS Order*"), *remanded in part sub nom.*, *Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F. 3d 991 (8th Cir. 2018).

[26] *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, WC Docket No. 17-144 et al., Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10452, para. 141 (2018) ("*Rate-of-Return BDS Order*").

[27] *Id.* at 10452.

[28] *See Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, Report and Order, 35 FCC Rcd 12425 (15), 12449, para. 46 (2020).

based on service availability and pricing under current rules. Precipitous change imposes substantial costs on these stakeholders and risks market disruption that harms the very consumers the Commission seeks to serve.

V. CONCLUSION

INCOMPAS supports regulatory flexibility in genuinely competitive markets. However, the Commission's competitive market test continues to set an inappropriately low bar for what constitutes competition and, as such, the association urges the Commission to take no further action in this proceeding.

If the Commission proceeds with further deregulation in counties not currently deemed competitive, it must adopt meaningful safeguards to protect consumers and promote sustainable competition. Specifically, the Commission should (1) require robust collocation access for ILECs in deregulated markets, with enforceable standards ensuring that competitive carriers can access essential facilities on reasonable terms; (2) ensure an orderly transition to an IP-based PSTN that safeguards 911 calling by establishing a holistic IP interconnection framework and stabilizing DS1/DS3 pricing; and (3) establish a 36-month transition period rather than the proposed two years, consistent with INCOMPAS's previous recommendations and the Commission's precedent in other major rulemakings. These measures are not obstacles to deregulation, but rather essential elements of responsible deregulation that promotes long-term competitive markets. Collocation requirements facilitate the competitive entry that the Commission envisions, while an adequate transition period ensures that carriers and customers can adapt without unnecessary disruption.

The BDS market serves critical functions for American businesses, anchor institutions, and government agencies. The Commission's decisions in this proceeding will have long-lasting

impacts on the availability, quality, and affordability of these essential services. INCOMPAS urges the Commission to proceed thoughtfully and, if necessary, with appropriate safeguards that promote genuine, sustainable competition and safeguard critical 911 services.

Respectfully submitted,

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