

October 20, 2016

VIA ECFS

Marlene Dortch
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Business Data Services, WC Docket Nos. 16-143, 15-247 and 05-25

Dear Ms. Dortch,

On behalf of the undersigned associations, I write to express our support of the reply comments filed by Internet2 and EDUCAUSE in the Business Data Services (“BDS”) proceeding. Consistent with The Quilt’s recent filing in this proceeding, we respectfully recommend that you clarify the proposed definition of BDS and explicitly state that it does not apply to non-profit, private research and education (or R&E) networks.

R&E networks, such as the Internet2 Network and the more than 35 state and regional R&E networks throughout the U.S., have a singular mission of supporting the networking needs of their communities on a non-profit basis. They are specially designed, engineered, and actively managed to meet the needs of only their users, namely scientists, academics, and researchers in the nation’s leading research institutions and government agencies. To meet the demands of these unique users, R&E networks are provisioned to the custom specifications of particular members, often as breakable testbed services to push the boundaries of networking capabilities. Nevertheless, R&E networks have certain common features, such as abundant symmetrical bandwidth and low latency and jitter, with transport capacities that are at least 100 times more robust than anything under consideration here. Non-profit R&E networks also connect more than 93,000 community anchor institutions, including K-12 schools, libraries, and museums.

U.S. higher education institutions rely on R&E networks in myriad ways. K-12 students that have access to the high-quality broadband offered by these non-profit networks are better prepared to enter college. Once they arrive in the higher education system, the capabilities offered by R&E networks offer unrestrained bandwidth that allows them to innovate not only with new technological advances but new ways of learning and researching. Further, higher education institutions are often at the forefront of the most impactful scientific and engineering research initiatives worldwide. U.S. colleges and universities rely on the

transformational capabilities of advanced R&E networks to produce research and technical developments that drive the economy and result in innumerable improvements in the quality of life for millions of Americans.

Therefore, it is essential not just to higher education but the entire R&E community that R&E networks not be inhibited from fulfilling their missions to their members through a one-size-fits-all approach. However, the proposed BDS rules may do just that. As Internet2 and EDUCAUSE expressed in their comments, the proposed definition of BDS seems to inaccurately assume that all data transport services are telecommunications services offered on indiscriminate terms directly to the public. On the contrary, the evidence in the record demonstrates that many networking arrangements that would otherwise fall under the BDS definition are offered on a private-carriage basis. This is particularly the case for purpose-built R&E networks, which should undoubtedly fall within one of the "rare exceptions" to common-carrier treatment mentioned in Chairman Wheeler's recent BDS Fact Sheet.

Indeed, the proposed definition of BDS and related common-carrier classification appear to overlook decades of precedent recognizing the distinction between private-carriage and common-carriage offerings, which the Commission itself has held must be analyzed on a case-by-case basis. Since Internet2 and EDUCAUSE filed their comments, certain commenters have attempted to summarily dismiss well-settled legal authority that private-carriage arrangements cannot be regulated as common-carrier services. But as the Commission recently reiterated before the D.C. Circuit in defending its Open Internet Order, if a provider decides not to make a standardized, mass market offering, that entity would instead be providing a private-carrier service outside of the scope of Title II.

There is also precedent unique to R&E networks that would prevent these specialized networking arrangements from falling within the proposed BDS framework. For example, in the context of CALEA, the FCC has recognized that R&E networks are private networks that do not offer services to the general public and therefore do not constitute telecommunications services. In addition, the Commission has previously held that specialized providers that offer service to their own members on a non-profit basis are not common carriers and therefore cannot be regulated under Title II. No party to this proceeding, much less the Commission itself, is proposing to reverse this longstanding precedent. Thus, the FCC should revise the definition of BDS to clarify and explicitly state that it does not apply to R&E networks, such as those operated by Internet2 and the country's state and regional R&E networking partners. Any other approach could have the unintended consequence of hindering the missions of R&E networks in the United States.

Moreover, there is no policy justification for regulating ultra-high capacity and specialized R&E networks like they are BDS. R&E networks are quantitatively and qualitatively distinct from anything under consideration in this proceeding. We therefore respectfully request that you carefully consider the recommendations offered by Internet2 and EDUCAUSE and clarify that R&E networks are not the subject of this proceeding and the services they provide do not constitute BDS.

Business Data Services
WC Docket Nos. 16-143, 15-247 and 05-25
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Sincerely,

A handwritten signature in black ink, appearing to read "Molly Corbett Broad". The signature is fluid and cursive, with the first name "Molly" being the most prominent.

Molly Corbett Broad
President

On behalf of:

American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Public and Land-grant Universities
EDUCAUSE
Internet2