

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

In the Matter of )
Business Data Services in an Internet Protocol ) WC Docket No. 16-143
Environment )
Technology Transitions ) GN Docket No. 13-5
Special Access for Price Cap Local Exchange ) WC Docket No. 05-25
Carriers )
AT&T Corporation Petition for Rulemaking to ) RM-10593
Reform Regulation of Incumbent Local Exchange )
Carrier Rates for Interstate Special Access Services )

ORDER

Adopted: October 13, 2017

Released: October 13, 2017

By the Chief, Pricing Policy Division:

15-DAY TARIFF FILINGS: November 16, 2017
PETITIONS: November 24, 2017
REPLIES: November 28, 2017 (due no later than 12:00 p.m. (noon) Eastern Time)

7-DAY TARIFF FILINGS: November 27, 2017
PETITIONS: November 29, 2017 (due no later than 12:00 p.m. (noon) Eastern Time)
REPLIES: November 30, 2017 (due no later than 12:00 p.m. (noon) Eastern Time)

I. INTRODUCTION

1. This Order establishes procedures for the filing of access charge tariff revisions and Tariff Review Plans (TRPs) for incumbent local exchange carriers (LECs) subject to price cap regulation (price cap LECs) pursuant to the Commission’s Business Data Services Order.1 Price cap LECs are required to make such filings to implement the new productivity offset (or X-factor) adopted in the Business Data Services Order, to become effective on December 1, 2017.2 This Order sets an effective date of December 1, 2017 for tariff filings made on 15 days’ notice and sets a modified effective date of December 4, 2017, for tariff filings made on 7 days’ notice.3 This Order also makes available revised TRP worksheets to support any necessary rate revisions reflected in price cap LEC business data (or

1 See Business Data Services in an Internet Protocol Environment et al., WC Docket No. 16-143 et al., Report and Order, 32 FCC Red 3459 (2017) (Business Data Services Order).

2 Business Data Services Order, 32 FCC Red at 3563, para. 257. See 47 CFR § 61.45.

3 To establish an effective date of December 4, 2017, for the tariff filings made on 7 days’ notice, we grant a limited waiver of 47 CFR § 61.45(b)(1)(iv), to the extent that this rule would otherwise require the filings to be effective as of December 1, 2017. Absent a waiver, carriers would be required to file their tariffs on November 24, the day after Thanksgiving, which could present filing difficulties for carriers. Under this limited waiver, carriers are required to make their tariff filings on November 27, 2017, to become effective on December 4, 2017.

special access) tariffs. The TRP worksheets display basic data on rate development in a consistent manner, thereby facilitating review of the rate revisions by the Commission and interested parties.

## II. BACKGROUND

2. On April 28, 2017, the Commission released the *Business Data Services Order*, which, among other things, provided pricing and other regulatory relief for certain business data services provided by price cap LECs in competitive and grandfathered areas and modified the regulatory obligations for tariffed special access services provided by price cap LECs in noncompetitive areas.<sup>4</sup> Only the end user channel terminations and certain other noncompetitive business data services in noncompetitive areas remain subject to price cap regulation, and the Commission adopted an X-factor of 2.0 percent for these services.<sup>5</sup> The X-factor adjusts a price cap LEC's price cap index (PCI) to account for the productivity gains by which price cap LECs are expected to outperform economy-wide productivity gains.<sup>6</sup>

3. To implement the revised X-factor, the Commission required price cap LECs to make a one-time filing revising their TRPs and rates for the special access basket to reflect the 2.0 percent X-factor, effective December 1, 2017.<sup>7</sup> To ease the burden on industry, and because base period demand and the value of GDP-PI reflected in the PCI typically are not updated during a tariff year, the Commission permitted price cap LECs to use the same base period demand and value of GDP-PI in their December 1, 2017 filings as in their July 1, 2017 annual filings.<sup>8</sup> The Commission stated that further specific direction on the material required to be filed in the TRPs would be provided in a public notice or order preceding the effective date of the revised X-factor.<sup>9</sup> We hereby provide such direction.

## III. DISCUSSION

### A. Tariff Effective Date and Tariff Filing Dates

4. For rates to be deemed lawful under section 204(a)(3) of the Act, price cap LECs must make their tariff filing either fifteen or seven days prior to the effective date of their tariffs, depending on the type of changes proposed.<sup>10</sup> We therefore direct price cap LECs to file access tariffs which require 15 days' notice (rate increases) to be deemed lawful on November 16, 2017, to become effective on December 1, 2017. Pursuant to the limited waiver granted herein, any filing that only requires seven days' notice (rate reductions) should be filed on November 27, 2017, to become effective on December 4, 2017.

### B. Price Cap TRP Spreadsheets and Workpapers

5. Pursuant to the rules adopted in the *Business Data Services Order*, price cap LECs must file, for the special access basket, revised TRPs and rates to reflect the new 2.0 percent X-factor, effective

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<sup>4</sup> See generally *Business Data Services Order*, 32 FCC Rcd 3459.

<sup>5</sup> *Id.* at 3543, para. 197.

<sup>6</sup> *Id.* at 3544, para. 198; see also 47 CFR § 61.45(b)(1)(i).

<sup>7</sup> *Business Data Services Order*, 32 FCC Rcd at 3563, para. 259. See 47 CFR § 61.45(b)(1)(iv). The effective date for tariff filings made on 7 days' notice has been modified herein from December 1, 2017, to December 4, 2017. See *supra* para. 1, note 3.

<sup>8</sup> *Business Data Services Order*, 32 FCC Rcd at 3563, para. 258. See *Material to be Filed in Support of 2017 Annual Access Tariff Filings*, WC Docket No. 17-65, Order, 32 FCC Rcd 4740 (2017) (*2017 Annual Filing TRP Order*). See also *supra* para. 1, note 3.

<sup>9</sup> *Business Data Services Order*, 32 FCC Rcd at 3564, para. 259.

<sup>10</sup> 47 U.S.C. § 204(a)(3).

December 1 or 4, 2017.<sup>11</sup> Price cap LECs also must exclude the demand for special access services in competitive and grandfathered areas from the price cap calculations.<sup>12</sup> The new 2.0 percent X-factor should be reflected in the PCI for the special access basket and the pricing bands for each service category and subcategory within this basket.<sup>13</sup> Special access rates for services in noncompetitive areas must be established at levels where the actual price index does not exceed the PCI and the service band index for each service category and subcategory does not exceed its upper limit. Price cap LECs are permitted to use the same base period demand, excluding demand for competitive and grandfathered services, and value of GDP-PI in their December 1 or 4, 2017 filings as in their July 1, 2017 annual filings.<sup>14</sup> Otherwise, price cap LECs must base the price cap calculations on the Commission's rules for an annual filing.<sup>15</sup>

### C. Tariff and Tariff Review Plan Filing Instructions

6. Price cap LECs must use the Commission's Electronic Tariff Filing System (ETFS) to file all of their tariff material.<sup>16</sup> Price cap LECs should make every effort to file as early in the day as possible to avoid any complications in meeting the November 16, 2017 and November 27, 2017, pre-7:00 p.m. Eastern Time deadlines for filing in the ETFS. Price cap LEC tariff filings must be received by ETFS after 7:00 p.m. Eastern Time on November 15, 2017 and before 7:00 p.m. Eastern Time on November 16, 2017 for the filing to be considered officially received on November 16, 2017. Price cap LEC tariff filings must be received after 7:00 p.m. Eastern Time on November 26, 2017, and before 7:00 p.m. Eastern Time on November 27, 2017, for the filing to be considered officially received on November 27, 2017.

7. Copies of the information filed electronically may be obtained via the Internet using ETFS at <https://apps.fcc.gov/etfs/etfsHome.action>. For more information, contact either Robin Cohn or Richard Kwiatkowski, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1540.

### D. Pleading Filing Dates and Procedures

8. Pursuant to sections 1.419 and 1.773 of the Commission's rules,<sup>17</sup> interested parties may file petitions to suspend or reject tariff filings, and replies thereto, on or before the dates indicated on the first page of this document. Pleadings should reference **WC Docket No. 16-143**, and may be filed by paper copies or by using the Electronic Comment Filing System (ECFS).<sup>18</sup>

9. In accordance with the tariff filing schedule, petitions to suspend or reject tariff filings made on 15 days' notice will be due November 24, 2017, and replies will be due no later 12:00 p.m. (noon) Eastern Time on November 28, 2017. Petitions to suspend or reject tariff filings made on 7 days' notice will be due no later 12:00 p.m. (noon) Eastern Time on November 29, and replies will be due no later than 12:00 p.m. (noon) Eastern Time on November 30, 2017.<sup>19</sup>

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<sup>11</sup> *Business Data Services Order*, 32 FCC Rcd at 3563, para. 259. See 47 CFR § 61.45(b)(1)(iv). See also *supra* para. 1, note 3.

<sup>12</sup> See 47 CFR § 69.807(a) and (c). See also 47 CFR § 69.801(e).

<sup>13</sup> *Business Data Services Order*, 32 FCC Rcd at 3563, para. 259.

<sup>14</sup> *Id.* at 3563, para. 258. See *supra* para. 1, note 3.

<sup>15</sup> See *id.* at 3563-64, para. 260. See 47 CFR §§ 61.45-47.

<sup>16</sup> 47 CFR § 61.13(b).

<sup>17</sup> 47 CFR §§ 1.419, 1.773.

<sup>18</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

<sup>19</sup> We waive any inconsistent portions of sections 1.4(f), 1.773(a), and 1.773(b) of the Commission's rules, 47 CFR §§ 1.4(f), 1.773(a), 1.773(b).

- Electronic Filers: Pleadings may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

10. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

11. A courtesy copy of any petitions and replies must also be e-mailed to Richard Kwiatkowski, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 5-A460, Washington, DC 20554, [Richard.Kwiatkowski@fcc.gov](mailto:Richard.Kwiatkowski@fcc.gov). In addition, a courtesy copy must be addressed to the Chief, Pricing Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, SW, Room 5-A221, Washington, DC 20554 and e-mailed to [Robin.Cohn@fcc.gov](mailto:Robin.Cohn@fcc.gov).

12. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>20</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### **E. Service**

13. Because there is limited time available for review of the petitions to suspend or reject tariff filings, and replies thereto, we establish the following service requirements for these filings. On the date

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<sup>20</sup> 47 CFR § 1.1200 *et seq.*

a filing is submitted to the Commission, it shall also be served upon the filing LEC or the petitioner to which it responds, respectively, or its attorney or other duly constituted agent, by personal delivery, by facsimile transmission, or e-mail.<sup>21</sup> Parties are instructed to provide contact persons, e-mail addresses, and facsimile numbers in their filings. Parties filing petitions and replies electronically are reminded they are still required to serve copies in accordance with the requirements stated in this paragraph.

#### **F. Certification**

14. The filing of inaccurate or incomplete data may seriously detract from the ability of the Commission and interested parties to evaluate the revised rates. All price cap LECs must certify that their data are accurate by including a signed statement that the support data are true, correct, and complete to the best of the carrier's knowledge. This certification will apply to all data submitted in support of revised rates, including the data that are filed in the TRP, and should be displayed as the last page in each company's filing containing its TRP. Price cap LECs are also under a continuing legal obligation to correct any inaccurate or incomplete data subsequently discovered in the TRP or other support data.

#### **G. Compliance with the Paperwork Reduction Act**

15. The TRP appended to this Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).<sup>22</sup> The Commission has submitted this collection to the Office of Management and Budget (OMB) under the PRA.<sup>23</sup> We have requested that OMB expedite its review of this collection and will publish notice of any OMB approval in the Federal Register. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,<sup>24</sup> we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

16. In this Order, we have assessed the effects on price cap LECs of filing the TRP and believe we have minimized the burden to the extent possible. We minimize the regulatory burden on price cap LECs by permitting carriers to use the same base period demand and value of GDP-PI in their December 1 or 4, 2017 filings as in their July 1, 2017 annual filings.<sup>25</sup> As required by the PRA, the Commission sought comment on the revisions to the TRPs, including the revised 2.0 percent X-factor, that set forth the summary material that incumbent LECs file to support revisions to the rates in their interstate access service tariffs.<sup>26</sup>

### **IV. ORDERING CLAUSES**

17. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 5, and 201-209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 155, 201-209, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, this Order IS ADOPTED.

18. IT IS FURTHER ORDERED THAT, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, sections 1.4(f), 1.773(a) and 1.773(b) of the Commission's rules, 47 CFR §§ 1.4(f), 1.733(a), 1.773(b), section 61.45(b)(iv), IS WAIVED for the limited purpose specified in *supra* paragraph 1, note 3.

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<sup>21</sup> 47 CFR §§ 1.773(a)(4), (b)(3). We waive any inconsistent portions of section 1.47(d) of the Commission's rules, 47 CFR § 1.47(d).

<sup>22</sup> Pub. L. No. 104-13, 109 Stat. 17.

<sup>23</sup> See FCC, Information Collection Being Submitted for Review and Approval to the Office of Management and Budget, Notice and Request for Comments, 82 Fed. Reg. 42346, 42346-47 (Sept. 7, 2017) (FCC X-factor Notice).

<sup>24</sup> Pub. L. No. 107-198, 116 Stat. 729. See 44 U.S.C. § 3506(c)(4).

<sup>25</sup> See, e.g., *supra* para. 3. See also 2017 Annual Filing TRP Order; *supra* para. 1, note 3.

<sup>26</sup> See FCC X-factor Notice, 82 Fed. Reg. at 42346.

19. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, sections 1.4(f), 1.773(a) and 1.773(b) of the Commission's rules, 47 CFR §§ 1.4(f), 1.733(a), 1.773(b), ARE WAIVED for the limited purpose specified in *supra* paragraph 8, note 17.

20. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, section 1.47(d) of the Commission's rules, 47 CFR § 1.47(d), IS WAIVED for the limited purpose specified in *supra* paragraph 13, note 21.

21. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Pamela S. Arluk  
Chief  
Pricing Policy Division  
Wireline Competition Bureau

<https://www.fcc.gov/2017-x-factor-filing-trps>