



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU RELEASES RESULTS OF TESTS REQUIRED BY SECTIONS 61.50(j) AND 69.803(c) OF THE COMMISSION'S RULES

WC Docket Nos. 21-17 and 17-144

By this Public Notice, the Wireline Competition Bureau (Bureau) complies with the obligations imposed by the Commission's rules and publicly releases the updated results of the tests the Bureau is required to perform every three years, pursuant to sections 61.50(j) and 69.803(c) of the Commission's rules.¹ These results are based on the Commission's most recent, publicly-available, Form 477 data and further supplement the previous lists the Bureau has released in compliance with the above-referenced rules. The results of the Bureau's analysis are attached to this Public Notice as Appendices A and B. The second supplemental lists, as well as the previous lists from 2017, 2018 and 2020, are available at: <https://www.fcc.gov/general/bds-competitive-and-noncompetitive-lists>.²

On May 15, 2017, the Bureau announced the public release of a list of counties served in part or in whole by price cap carriers (price-cap counties) that were deemed competitive, non-competitive, or grandfathered pursuant to the initial competitive market test adopted in the *Price Cap BDS Order*.³ The

¹ See *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., 32 FCC Rcd 3459, 3527-29, paras. 145-152 (2017) (*Price Cap BDS Order*); 47 CFR § 69.803(c); *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, 10439-40, paras. 103-104 (2018) (*Rate-of-Return BDS Order*); 47 CFR § 61.50(j). In 2021, the Bureau terminated WC Docket Nos. 16-143, 05-25, and RM-10593, and opened WC Docket No. 21-17 for price cap business data services (BDS) issues. See *Wireline Competition Bureau Terminates Price Cap Data Services Proceedings, Closes Docket; Parties Required to Destroy or Return Confidential and Highly Confidential Documents*, WC Docket No. 21-17 et al., Public Notice, 36 FCC Rcd 343 (WCB 2021).

² FCC, *BDS Competitive and Noncompetitive Lists* (Jan. 27, 2023), <https://www.fcc.gov/bds-competitive-and-noncompetitive-lists> (*BDS Competitive Market Analysis Lists*). The Commission directed the Bureau to release a public notice listing newly competitive counties for price cap carriers and study areas for rate-of-return carriers and also provide this information on the Commission's website. *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151, 47 CFR § 69.803(b)(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104; 47 CFR § 61.50(j).

³ *Wireline Competition Bureau Publicly Releases Lists of Counties Where Lower Speed TDM-Based Business Data Services Are Deemed Competitive, Non-Competitive, or Grandfathered*, WC Docket Nos. 16-143 et al., Public Notice, 32 FCC Rcd 3966, 3966 (WCB 2017) (*2017 County List Public Notice*). A county was deemed competitive in the initial price cap test if either: (1) 50% of locations with BDS demand within the county were within a half mile of a location served by a competitive provider based on data from the 2015 special access data collection; or (2) 75% of the census blocks within the county had access to broadband from a cable operator, based on Form 477 data as of December 2016. 47 CFR § 69.803(b)(1). A grandfathered market is a "county that does not satisfy the competitive market test set forth in § 69.803 for which a price cap carrier obtained Phase II relief pursuant to § 69.711(c)" prior to June 2017. 47 CFR §§ 69.801(e), 69.807(a).

initial price-cap test results were based on data from the 2015 special access data collection and Form 477 data, as of December 31, 2016.⁴

On October 25, 2018, the Bureau released a list of study areas served by rate-of-return carriers (rate-of-return study areas) receiving fixed universal service support that were deemed competitive pursuant to the competitive market test adopted in the *Rate-of-Return BDS Order*.⁵ The initial rate-of-return test results were based on Form 477 data, as of June 30, 2017.⁶ Rate-of-return carriers electing incentive regulation for their business data service (BDS) offerings serving competitive study areas and price cap carriers serving competitive counties were granted relief from ex ante pricing regulation and tariffing obligations for time division multiplexing (TDM)-based end-user channel terminations with capacity at or below a DS3.⁷

The Commission directed the Bureau to update the results of both tests every three years, based on the most recent Form 477 broadband availability data submitted by cable operators.⁸ For the price-cap update, the Commission directed the Bureau to use a modified version of the initial price-cap test based on updated Form 477 data. Under the subsequent price-cap test, a county is deemed competitive if a cable operator reports that 75% of the census blocks within the county have broadband availability.⁹ The Commission also directed the Bureau to re-run the rate-of-return test using updated Form 477 data.¹⁰ Under the rate-of-return test, a study area is deemed competitive if 75% of the census blocks within the study area are served by a cable operator offering a minimum of 10 Mbps downstream/1 Mbps upstream broadband service.¹¹

The Commission directed the Bureau to update the price-cap and rate-of-return test results every three years, following the 2020 price cap test, using Form 477 data as of the date of the most recent

⁴ 47 CFR § 69.803(b)(1). Pursuant to the initial price-cap market test, 1,879 counties were deemed competitive, 1,276 counties were deemed non-competitive, and 69 counties were in grandfathered markets. *BDS Competitive Market Analysis Lists*.

⁵ *Wireline Competition Bureau Publicly Releases List of Study Areas Deemed Competitive If Rate-of-Return Carriers Elect Incentive Regulation For Those Areas*, WC Docket No. 17-144 et al., Public Notice, 33 FCC Rcd 10169 (WCB 2018) (2018 County List Public Notice). A study area is deemed competitive in the rate-of-return test if 75% of the census blocks within the study area are served by a cable operator offering a minimum of 10/1 Mbps broadband service based on Form 477 data. 47 CFR § 61.50(j)(1).

⁶ 2018 County Public Notice, 33 FCC Rcd at 10169. Pursuant to the initial application of the rate-of-return test, the Bureau deemed 16 rate-of-return study areas receiving fixed universal service support to be competitive. *BDS Competitive Market Analysis Lists*.

⁷ 47 CFR § 61.50(k)(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 105; 47 CFR § 69.803(a); *Price Cap BDS Order*, 32 FCC Rcd at 3499, para. 86.

⁸ 47 CFR §§ 61.50(j)(2), 69.803(c); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, para. 104; *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151.

⁹ 47 CFR § 69.803(c)(2); *Price Cap BDS Order*, 32 FCC Rcd at 3527-29, paras. 145-152. As with the initial price cap test, the Bureau used cable broadband connections with a minimum 10/1 Mbps capacity to assess competition.

¹⁰ *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, para. 104.

¹¹ 47 CFR § 61.50(j)(1)-(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, paras. 103-104. Given the high sunk costs involved in network deployment, the Commission determined that once a price-cap county or rate-of-return study area is deemed competitive, it would retain its competitive status and not be retested. 47 CFR §§ 61.50(j)(3), 69.803(c)(3); see *Price Cap BDS Order*, 32 FCC Rcd at 3528-29, para. 152; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439, para. 103.

collection.¹² The Bureau now updates the results of both tests using Form 477 data reflecting the availability of broadband service from cable operators as of December 31, 2021.¹³ Based on these data, the Bureau, in coordination with the Office of Economics and Analytics, tested price-cap counties that were previously deemed to be non-competitive and retested rate-of-return study areas receiving fixed universal service support that were previously deemed not to be competitive.¹⁴ The Bureau found that 15 price-cap counties that were previously deemed non-competitive now meet the competitive threshold established by the Commission's rules. The price cap-served areas within those counties are therefore deemed competitive, effective immediately.¹⁵ The Bureau also found that five additional rate-of-return study areas receiving fixed universal service support meet the applicable threshold and are therefore deemed competitive, also effective immediately.¹⁶

The lists of price-cap counties and rate-of-return study areas newly deemed competitive pursuant to the updated test results are attached as Appendices A and B, respectively. Parties wishing to challenge these updated test results may file a petition for reconsideration with the Bureau or an application for review with the Commission.¹⁷ Pending any challenges to these results, the newly deemed-competitive price-cap counties and rate-of-return study areas will not be retested in subsequent three-year updates.¹⁸ These lists supplement the lists of price-cap counties and rate-of-return study areas deemed competitive pursuant to the initial and first supplemental competitive market tests which are also available on the Commission's website.¹⁹

For further information, please contact Erik Raven-Hansen, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1532 or via email at Erik.Raven-Hansen@fcc.gov.

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¹² *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104. The Commission directed the Bureau to update both tests every three years thereafter. *Id.*; 47 CFR §§ 61.50(j)(2), 69.803(c).

¹³ FCC, *Fixed Broadband Deployment Data from FCC Form 477* (Dec. 29, 2022), <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477>.

¹⁴ The Bureau did not test price-cap counties previously deemed competitive or grandfathered pursuant to the initial or supplemental price-cap test or retest rate-of-return study areas previously deemed competitive pursuant to the rate-of-return test, since those areas retain their competitive or grandfathered status. *See* 47 CFR §§ 61.50(j)(3), 69.803(c)(3), 69.807(a); *Price Cap BDS Order*, 32 FCC Rcd at 3528-29, paras. 151-152; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439, para. 103.

¹⁵ *See* 47 CFR § 69.803(c); *Price Cap BDS Order*, 32 FCC Rcd at 3528-29, paras. 151-52.

¹⁶ *See* 47 CFR § 61.50(j)(1)-(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, paras. 103-104.

¹⁷ *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, para. 104; 47 CFR § 1.106 (petitions for reconsideration); 47 CFR § 1.115 (applications for review); *see also* 47 CFR § 1.115(c) note ("Subject to the requirements of § 1.106, new questions of fact or law may be presented to the designated authority in a petition for reconsideration.").

¹⁸ *See* 47 CFR §§ 61.50(j)(3), 69.803(c)(3).

¹⁹ *See BDS Competitive Market Analysis Lists*.

APPENDIX A**Price Cap Counties Deemed Newly Competitive Effective January 27, 2023****FIPS State County or County-Equivalent**

| | | |
|-------|----|---------------------|
| 09011 | CT | New London County |
| 12061 | FL | Indian River County |
| 13105 | GA | Elbert County |
| 21173 | KY | Montgomery County |
| 22007 | LA | Assumption Parish |
| 24001 | MD | Allegany County |
| 24013 | MD | Carroll County |
| 37011 | NC | Avery County |
| 40033 | OK | Cotton County |
| 42051 | PA | Fayette County |
| 42103 | PA | Pike County |
| 42107 | PA | Schuylkill County |
| 51595 | VA | Emporia city |
| 51730 | VA | Petersburg city |
| 54029 | WV | Hancock County |

APPENDIX B**Rate-of-Return Study Areas Deemed Newly Competitive Effective January 27, 2023**

| SAC | State | Holding Company Name | Fund Type |
|------------|--------------|-----------------------------|------------------|
| 110737 | MA | X5 RTC LLC | ACAM I |
| 170145 | PA | BENTLEYVILLE TEL CO | ACAM I |
| 220354 | GA | CHICKAMAUGA TEL CORP | ACAM I |
| 300604 | OH | COLUMBUS GROVE TEL | ACAM I |
| 300649 | OH | ORWELL TEL CO | ACAM I |