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For Immediate Release

**FCC ADVANCES COMPETITION AND INVESTMENT IN
THE BUSINESS DATA SERVICES MARKET**
*Modernized Framework Will Spur Delivery of New Products & Services,
Benefiting Consumers, Businesses*

WASHINGTON, April 20, 2017 – Recognizing substantial and growing competition in the market for business data services, the Federal Communications Commission today eased outdated pricing rules to enable continued robust growth in the market.

Business data services, known also as BDS, are dedicated connectivity used by businesses, non-profits, and government institutions to meet their needs for secure and reliable communications. Lower bandwidth services, such as DS1s and DS3s, are a segment of the BDS market referred to as special access. BDS is essential to the production and delivery of goods and services across the economy, from connecting bank ATM networks and retail credit-card readers to providing enterprise business networks with access to branch offices, the Internet or the cloud.

Traditional special access services offered by local phone companies (incumbent local exchange carriers, or ILECs) have long been subject to FCC price regulation. But these legacy networks, which operate on yesterday’s copper-based “TDM” technologies at relatively low speeds, are becoming increasingly obsolete.

Instead, high-bandwidth applications, like video and teleconferencing, are driving demand for modern, high-speed Ethernet packet-based networks. Such networks are often deployed by lightly-regulated competitive carriers, which now account for nearly half of the \$45 billion BDS marketplace. In addition, cable-based BDS has been growing by approximately 20% annually for the past several years, a competitive trend that is expected to continue.

Relying on more than ten years of study of the market, a massive data collection, and a robust public record garnered from numerous requests for comment, the Report and Order adopted by the FCC today recognizes the strong competition present in the BDS market. Given that competition, the order finds that legacy regulation inhibits the investment required for the transition of BDS from legacy TDM networks to high-speed Ethernet connectivity. In response, the Order modernizes regulation in significant portions of the market.

Key findings and resulting changes include the following:

- Competition for packet-based services at speeds exceeding 45 Megabits per second (the

top speed of TDM “DS3” services) is widespread, making pricing regulation counterproductive for these services

- Continued price regulation for legacy TDM-based BDS in areas deemed competitive may stifle investment and inhibit the transition to modern IP services. The Order adopts a competitive market test which determines that pricing regulation is no longer required when either of the following conditions are met:
 - 50 percent of the buildings in a county are within a half-mile of a location served by a competitive provider, or
 - 75 percent of the census blocks in a county have a cable provider present
- After a transition period, ILECs in counties meeting the competitive market test will no longer file tariffs with the FCC. However, rates must continue to be just and reasonable
- In counties that do not meet the competitive market test, the Order retains price regulation for lower speed TDM connections to end-users. The Order allows ILECs to offer volume and term discounts, as well as contract tariffs (known as “Phase I pricing flexibility” under the FCC’s old rules)
- The Order levels the regulatory playing field for ILECs by extending uniform forbearance from certain rules that had previously been granted unevenly. This change includes forbearance from tariffing for all packet-based BDS
- The Order updates price cap regulation where it remains by reducing the cap annually by 2 percent on a going-forward basis to account for productivity gains. This productivity adjustment is known as the “X-factor.” While the X factor has not been adjusted since 2005, when it was set at the rate of inflation, the Order concludes that no catch-up adjustment is warranted since inflation offset productivity gains for TDM services. The new X-factor takes effect on December 1, 2017
- Packet-based and TDM telecommunications services continue to be subject to statutory requirements that rates, terms, and conditions be just and reasonable, enforceable through the complaint process. The Order also concludes that certain business data services constitute private carriage rather than common carriage

Action by the Commission April 20, 2017 by Report and Order (FCC 17-43). Chairman Pai and Commissioner O’Rielly approving. Commissioner Clyburn dissenting. Chairman Pai, Commissioners Clyburn and O’Rielly issuing separate statements.

WC Docket No. 16-143; GN Docket No. 13-5; WC Docket No. 05-25; RM-10593

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