

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144; *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25.

In 2017, this Commission generally deregulated business data services for price cap carriers, relying on competitive markets to achieve better outcomes for enterprise consumers than our previous regulatory scheme would have allowed. Today, we further this effort by offering model-based rate-of-return carriers the option to convert their BDS offerings to incentive regulation and altogether eliminate *ex ante* pricing regulation for electing carriers' high-speed services. While converting from rate-of-return regulation may not be the solution for every business, I anticipate that many carriers will be eager to take advantage of the opportunity to forego burdensome yearly cost studies and operate with greater investment flexibility.

The item has my strong support, although I might have directed electing carriers to set their initial rates at a lower rate of return. Since the transition to incentive regulation is voluntary, the fully-transitioned 9.75% rate of return designated in the *2016 Rate-of-Return Reform Order* seemed appropriate. I am, however, grateful for the recirculated draft's clarification that carriers electing during a second window would be required to set their rates according to the applicable rate of return in the year of their election.

Likewise, I am pleased by the decision to forbear from applying separations and other cost assignment rules to electing carriers. Thanks to regulatory and marketplace evolution, the process of separating regulated costs between interstate and intrastate jurisdictions has become increasingly irrelevant and unnecessary. With an additional subset of carriers no longer subject to the legacy rules, the case for comprehensive separations reform is weaker than ever. It is inappropriate to reopen that can of worms. Moreover, the forbearance we adopt here provides greater justification for the Commission's proposal in a separate proceeding to provide a one-time opportunity for carriers to change their category elections and extend the separations freeze for a prolonged period—rather than to overhaul our separations rules for an ever-shrinking base.

Further, since re-categorizing is costly and burdensome, carriers themselves should decide whether to unfreeze and update their category relationships in establishing going-in rates. By leaving this choice up to electing carriers, this item advances the overall goal of reducing regulatory burdens for model-based BDS providers. Lastly, it should be noted that our actions in the item with respect to jurisdictional separations are completely consistent with the Commission's authority, despite certain claims to the contrary.

I vote to approve.