

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144.

In an increasingly digitally dependent society, connectivity is a game-changer.

It is particularly powerful for small and rural communities. It allows small, locally-owned businesses to become major players in the national and global economy, generating and enabling sustainable social and economic growth right there at home. And Business Data Services (BDS), formerly known as Special Access, play an essential role in supporting that much needed next generation mobile broadband deployment, as well as public safety operations, and school and health care connectivity – all underscoring the importance of reliable, robust, and affordable communication services.

In this Notice of Proposed Rulemaking, we recognize that areas served by rate-of-return carriers are generally less dense, less populated, and have fewer competitive options, when compared to areas served by price cap carriers.

This means that the data collected for price cap carriers, and the competitive market test framework which the majority adopted in the 2017 BDS order, are not appropriate when it comes to evaluating those rate-of-return carriers' service areas that serve mostly small and rural communities.

Today's item will allow us to develop a full and accurate record which we need if we are to eliminate unnecessary regulatory burdens and properly assess the availability of competitive options for last-mile BDS services in those areas. Make no mistake – seeking comment to develop a full record is but an important first step to understand the state of the market and just what is at stake. The next step is much more of a challenge.

The regulations we are proposing to evaluate, and eliminate if an area is deemed competitive, are designed to ensure that BDS is offered to those businesses that form the economic backbone of communities across the country at just and reasonable rates. I hope that the forthcoming record will shed light on whether the proposed changes, if adopted, will weaken the Commission's ability to protect consumers or prevent price hikes for small business data services in communities that need those services the most.

I will never object to a framework that minimizes regulatory burdens, when there is evidence that market forces are sufficient to discipline prices, but we must not repeat the mistakes of the 2017 BDS order – where the majority chased deregulation at all costs. We need reliable data to determine a competitive test. We need to assess the number of providers necessary for true competition to discipline this market, and there needs to be appropriate geographic and product market definitions in our analysis which is why further stakeholder engagement is needed. Without it, we run the risk that the next step the Commission takes, could end in a result I cannot abide: a deeper digital divide.

I would like to thank to my colleagues for agreeing to my request to seek comment, on whether there is sufficient competition to eliminate ex-ante price regulation for higher capacity BDS offerings, in areas served by rate-of-return carriers, instead of proposing such elimination based on a market analysis that excludes these carriers' market areas. I also thank the team from the Wireline Competition Bureau, for their dedication and their hard work on this item.